16C C.J.S. Constitutional Law § 1792

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

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(1) In General

§ 1792. Revocation of parole, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4838

Due process rights must be afforded in proceedings to revoke parole, but the full panoply of due process rights afforded a defendant in a criminal proceeding is not required.

The liberty of a parolee, although conditional, includes many of the core values of unqualified liberty and its termination inflicts a "grievous loss"; therefore, due process rights must be afforded in proceedings to revoke parole.[1] However, parole revocation does not call for the full panoply of due process rights afforded a defendant in a criminal proceeding.[2]

In order to comport with due process, a two-step procedure generally must be followed before parole may be revoked.[3] A parolee is entitled to a preliminary hearing to determine whether there is probable cause to believe that the parolee has violated the conditions of parole,[4] followed by a final revocation hearing to determine whether, in light of the violation, parole should

be revoked.[5] However, under certain circumstances, two separate hearings are not required, and a proper consolidated hearing may satisfy due process.[6]

Delay in execution of violation warrant.

The mere lapse of time or delay in the execution of a parole violator's warrant, without more, does not violate due process.[7] Under a due process analysis, the length of time between the issuance and execution of a parole violation warrant is but one factor in determining its continuing validity, and a delay in execution must be unreasonable before due process is affected.[8] Timely objection to the delay, unavailability of witnesses, lost sources of mitigating evidence, the violator's own conduct as a contributing cause of the delay, and the parole board's reasons for the delay are factors which also must weigh in the balance when determining whether there has been a violation of due process.[9]

Review.

Due process requires that a parole revocation decision be subject to judicial review.[10] A remand which allows an agency of the State a second shot at establishing grounds for parole revocation violates the standards of due process applicable to parole revocation procedures.[11] Similarly, a remand which directs or permits supplementing the record by additional evidence violates the concept of due process, and such a second hearing is analogous to allowing a second trial to "shore up" the record to support the judgment, which also violates due process.[12]

Footnotes

1 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).
Due process applicable to conditional liberty of paroled criminal
Vt.—G.T. v. Stone, 159 Vt. 607, 622 A.2d 491 (1992).

2 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Fla.—Russ v. State, 313 So. 2d 758 (Fla. 1975).
N.Y.—McLucas v. Oswald, 40 A.D.2d 311, 339 N.Y.S.2d 760 (3d Dep't 1973).
Wyo.—Mason v. State, 631 P.2d 1051 (Wyo. 1981).
Effect of discretion to grant parole
A statute vesting discretion in a parole authority to grant parole creates no expectancy of parole or constitutional liberty sufficient to establish a right of procedural due process, and thus, the authority has discretion to rescind an unexecuted order for a prisoner to receive parole at a future date without providing a hearing.
Ohio—Hattie v. Anderson, 68 Ohio St. 3d 232, 1994-Ohio-517, 626 N.E.2d 67 (1994).

3 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Cal.—In re Becker, 48 Cal. App. 3d 288, 121 Cal. Rptr. 759 (3d Dist. 1975).
Wyo.—Mason v. State, 631 P.2d 1051 (Wyo. 1981).

4 § 1793.

5 § 1794.

6 Or.—Vrieling v. Oregon State Bd. of Parole, 21 Or. App. 245, 534 P.2d 516 (1975).

7 U.S.—Gaddy v. Michael, 519 F.2d 669 (4th Cir. 1975); Schoffner v. U.S. Bd. of Parole, 416 F. Supp. 759 (M.D. Pa. 1976), aff'd, 547 F.2d 1164 (3d Cir. 1977).
N.Y.—People ex rel. Allen v. Warden of George Motcham Detention Center, 39 Misc. 3d 546, 959 N.Y.S.2d 881 (Sup 2013).

8 La.—State v. Langley, 711 So. 2d 651 (La. 1998), on reh'g in part, (June 19, 1998).

9 U.S.—Gaddy v. Michael, 519 F.2d 669 (4th Cir. 1975); Schoffner v. U.S. Bd. of Parole, 416 F. Supp. 759 (M.D. Pa. 1976), aff'd, 547 F.2d 1164 (3d Cir. 1977).

Three-year delay

A delay of three years in executing a parole violation warrant and giving the parolee notice of its issuance did not result in a denial of due process to the parolee, who violated the parole agreement and who acknowledged, in the agreement, that he understood that his failure to comply with the conditions in any manner would result in his return to custody.

U.S.—Parham v. Warden, Bridgeport Correctional Center, 172 Conn. 126, 374 A.2d 137 (1976).

10 N.Y.—Arthurs v. Regan, 69 Misc. 2d 363, 330 N.Y.S.2d 133 (Sup 1972), judgment aff'd, 41 A.D.2d 214, 341 N.Y.S.2d 957 (2d Dep't 1973).

11 Wis.—State ex rel. Gibson v. Department of Health and Social Services, 86 Wis. 2d 345, 272 N.W.2d 395 (Ct. App. 1978).

12 Wis.—Snajder v. State, 74 Wis. 2d 303, 246 N.W.2d 665 (1976).

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b. Revocation of Parole

(1) In General

§ 1793. Notice and preliminary parole revocation hearing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4838

With respect to a preliminary parole revocation hearing, due process requires that the parolee be given notice that the hearing will take place and that its purpose is to determine whether there is probable cause to believe the parolee has committed a parole violation.

With respect to a preliminary parole revocation hearing, due process requires that the parolee be given notice that the hearing will take place[1] and that its purpose is to determine whether there is probable cause to believe the parolee has committed a parole violation.[2] Generally, on an arrest for a parole violation, due process requires an inquiry in the nature of a preliminary hearing to determine whether there is probable cause or reasonable grounds to believe that a parolee committed acts which constitute a violation of parole conditions.[3]

Since a preliminary parole revocation hearing is ordinarily required by due process because a parolee is subject to a loss of liberty pending a final hearing, where a parolee is already in custody on charges and for reasons separate from the revocation proceedings, a preliminary hearing is not required.[4] Furthermore, where conduct which constitutes a prima facie violation of parole is independently charged as a new crime, a preliminary hearing on the new offense satisfies the due process requirement for a preliminary revocation hearing[5] as long as the parolee has fair notice of the nature and effect of a hearing intended to serve such a dual purpose.[6] Moreover, an extradition hearing for a parolee who has left the state is a suitable substitute for a prerevocation hearing and satisfies the due process requirement.[7]

Notice of preliminary hearing.

The notice of a preliminary hearing must state the time and place of the hearing[8] and what parole violations have been alleged.[9]

Requisites and sufficiency of hearing.

A preliminary parole revocation hearing must be conducted in accordance with certain due process requirements.[10] Such a hearing must be conducted by someone, not necessarily a judicial officer,[11] who is not directly involved in the case.[12] Furthermore, a preliminary parole revocation hearing should be conducted at or reasonably near the place of the alleged parole violation or the arrest[13] and as promptly as is convenient after the alleged parole violation or the arrest[14] while information is fresh and sources are available.[15]

At a preliminary parole revocation hearing, a parolee has a due process right to appear and speak in the parolee's own behalf and present documentary evidence and witnesses.[16] Due process also requires at such a hearing that, on the request of a parolee, a person who has given adverse information on which revocation is to be based be made available for questioning in the parolee's presence,[17] but if the hearing officer finds that an informant would risk harm if the informant's identity were revealed, confrontation and cross-examination are not mandated by due process.[18]

Representation by counsel.

Whether the assistance of counsel at a preliminary parole revocation hearing is required by due process depends on the peculiarities of a particular case, and the decision should be made on a case-by-case basis in the exercise of the sound discretion of the parole board.[19]

Footnotes

1 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Cal.—In re Melendez, 37 Cal. App. 3d 967, 112 Cal. Rptr. 755 (1st Dist. 1974).
Wis.—State ex rel. Flowers v. Department of Health and Social Services, 81 Wis. 2d 376, 260 N.W.2d 727 (1978).

2 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Mo.—Moore v. Stamps, 507 S.W.2d 939 (Mo. Ct. App. 1974).

3 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Cal.—Williams v. Superior Court, 230 Cal. App. 4th 636, 178 Cal. Rptr. 3d 685 (4th Dist. 2014).
Preliminary and final hearings required

The Due Process Clause of the Fourteenth Amendment of the United States Constitution requires that a parolee receive a preliminary hearing in order to determine whether there is probable cause for revocation, and upon a finding of probable cause, there must still be a second final hearing.

N.M.—Reed v. State ex rel. Ortiz, 1997-NMSC-055, 124 N.M. 129, 947 P.2d 86 (1997), cert. granted, judgment rev'd on other grounds, 524 U.S. 151, 118 S. Ct. 1860, 141 L. Ed. 2d 131 (1998).

As to the final hearing in a parole revocation proceeding, generally, see § 1794.

4 Okla.—Wilson v. State, 1980 OK CR 118, 621 P.2d 1173 (Okla. Crim. App. 1980).

5 Cal.—In re Law, 10 Cal. 3d 21, 109 Cal. Rptr. 573, 513 P.2d 621 (1973).

Pa.—Com. v. Holmes, 248 Pa. Super. 552, 375 A.2d 379 (1977).

6 Cal.—In re Law, 10 Cal. 3d 21, 109 Cal. Rptr. 573, 513 P.2d 621 (1973).

7 Cal.—In re Morales, 43 Cal. App. 3d 243, 117 Cal. Rptr. 645 (4th Dist. 1974).

8 Cal.—In re Williams, 36 Cal. App. 3d 649, 111 Cal. Rptr. 870 (3d Dist. 1974).

Mo.—Moore v. Stamps, 507 S.W.2d 939 (Mo. Ct. App. 1974).

Transfer of location

The transfer of a preliminary parole revocation hearing to another location, without adequate notice thereof to the parolee, vitiated the parolee's right to present witnesses in his own behalf and resulted in a denial of due process at the hearing.

N.Y.—People ex rel. Puma v. Warden, Queens House of Detention for Men, 76 Misc. 2d 336, 351 N.Y.S.2d 70 (Sup 1973).

9 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Cal.—In re Melendez, 37 Cal. App. 3d 967, 112 Cal. Rptr. 755 (1st Dist. 1974).

Mo.—Moore v. Stamps, 507 S.W.2d 939 (Mo. Ct. App. 1974).

10 U.S.—Lee v. Pennsylvania Bd. of Probation & Parole, 467 F. Supp. 1043 (E.D. Pa. 1979).

Disclosure of evidence

The due process requirement of disclosure to a parolee of the evidence against the parolee applies as to the hearing-officer stage of revocation proceedings.

Iowa—Thomas v. State Bd. of Parole, 220 N.W.2d 874 (Iowa 1974).

11 U.S.—Atkins v. City of Chicago, 631 F.3d 823 (7th Cir. 2011).

12 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Cal.—Williams v. Superior Court, 230 Cal. App. 4th 636, 178 Cal. Rptr. 3d 685 (4th Dist. 2014).

13 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Cal.—Williams v. Superior Court, 230 Cal. App. 4th 636, 178 Cal. Rptr. 3d 685 (4th Dist. 2014).

14 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Cal.—Williams v. Superior Court, 230 Cal. App. 4th 636, 178 Cal. Rptr. 3d 685 (4th Dist. 2014).

Failure to conduct timely hearing

A failure to conduct a timely preliminary parole revocation hearing, as provided for by statute, violates a parolee's right to due process unless the appropriate authority is able to establish that it could not conduct a hearing because the parolee was beyond its convenience and practical control.

N.Y.—People ex rel. Matthews v. New York State Div. of Parole, 95 N.Y.2d 640, 722 N.Y.S.2d 213, 744 N.E.2d 1149 (2001).

15 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); Atkins v. City of Chicago, 631 F.3d 823 (7th Cir. 2011).

16 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Cal.—Williams v. Superior Court, 230 Cal. App. 4th 636, 178 Cal. Rptr. 3d 685 (4th Dist. 2014).

17 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Cal.—In re Melendez, 37 Cal. App. 3d 967, 112 Cal. Rptr. 755 (1st Dist. 1974).

N.Y.—People ex rel. Lent v. McNulty, 83 Misc. 2d 723, 373 N.Y.S.2d 508 (Sup 1975).

18 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); U.S. v. Fatico, 579 F.2d 707, 3 Fed. R. Evid. Serv. 506 (2d Cir. 1978).

Cal.—In re Melendez, 37 Cal. App. 3d 967, 112 Cal. Rptr. 755 (1st Dist. 1974).

19 U.S.—Gagnon v. Scarpelli, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973).

N.Y.—People ex rel. Calloway v. Skinner, 33 N.Y.2d 23, 347 N.Y.S.2d 178, 300 N.E.2d 716 (1973).

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b. Revocation of Parole

(2) Notice and Final Hearing

§ 1794. Notice and final parole revocation hearing, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4838

With respect to a final parole revocation hearing, due process requires that a parolee be given written notice of the claimed violations of parole a reasonable time in advance of the parole revocation hearing and a hearing which must be conducted in a manner consistent with due process.

With respect to a final parole revocation hearing, due process generally requires that a parolee be given written notice of the claimed violations of parole[1] a reasonable time in advance of the parole revocation hearing.[2] Due process also requires that a parolee be informed of the possible consequences of a charge.[3]

Due process requires that a parolee be given a hearing prior to the final parole revocation decision,[4] and such a hearing must be conducted in a manner which is consistent with due process.[5] In general, however, the hearing required for parole revocation is

an informal one[6] structured to assure that the finding of a parole violation will be based on verified facts[7] and that the exercise of discretion will be informed by accurate knowledge of the parolee's behavior.[8]

Where a parolee has already been accorded a preliminary hearing at which the paolee has admitted the conviction in another state for the commission of crimes, due process does not require that the parolee also be accorded a final revocation hearing.[9] Similarly, where parole is revoked automatically because of the conviction of another offense, a final revocation hearing is not required by due process.[10] On the other hand, a statute providing for automatic revocation of parole without a hearing on a subsequent conviction was held to violate due process.[11]

Footnotes

1 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).
N.H.—State v. Mwangi, 161 N.H. 699, 20 A.3d 940 (2011).
Sufficiency of notice
U.S.—Martineau v. Perrin, 601 F.2d 1201 (1st Cir. 1979).
Minimum requirements of due process
A parolee's liberty involves significant values protected by the Due Process Clause of the Fifth and Fourteenth Amendments, and the minimum requirements of due process include written notice of the claimed violations of parole.
U.S.—Vanes v. U.S. Parole Com'n, 741 F.2d 1197 (9th Cir. 1984).

2 U.S.—Gibbany v. State of Okl., Dept. of Corrections, 415 F. Supp. 1117 (W.D. Okla. 1976).
N.Y.—People ex rel. Angell v. Lynch, 71 Misc. 2d 921, 337 N.Y.S.2d 556 (Sup 1972), judgment aff'd, 45 A.D.2d 853, 358 N.Y.S.2d 969 (2d Dep't 1974).
Regular mail
Though regular mail is appropriate for notification of parole revocation, due process nonetheless requires that the notification be effectuated in such time as to give the petitioner a fair opportunity to be heard.
N.J.—State v. Holmes, 109 N.J. Super. 180, 262 A.2d 725 (Law Div. 1970).
Insufficient notice
Notice at the commencement of a parole revocation hearing of the issue to be considered in determining whether to revoke parole does not meet due process requirements.
U.S.—Atkins v. Marshall, 533 F. Supp. 1324 (S.D. Ohio 1982).

3 U.S.—Vanes v. U.S. Parole Com'n, 741 F.2d 1197 (9th Cir. 1984).

4 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); Heinz v. McNutt, 582 F.2d 1190 (9th Cir. 1978).
Wash.—Pierce v. State, Dept. of Social and Health Services, 97 Wash. 2d 552, 646 P.2d 1382 (1982).
Protected liberty interest
An out-patient parolee from a rehabilitation center had a protected liberty interest in a parole revocation hearing and, thus, sufficiently alleged a deprivation of due process by reason of the failure of the parole officer and rehabilitation center to provide such a hearing.
U.S.—Henry v. Sanchez, 923 F. Supp. 1266 (C.D. Cal. 1996).

5 U.S.—U. S. ex rel. Sims v. Sielaff, 563 F.2d 821 (7th Cir. 1977).
Ind.—Catt v. Phend, 270 Ind. 267, 384 N.E.2d 1034 (1979).
Wash.—Matter of Myers, 20 Wash. App. 200, 579 P.2d 1006 (Div. 2 1978).

6 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
N.Y.—McLucas v. Oswald, 40 A.D.2d 311, 339 N.Y.S.2d 760 (3d Dep't 1973).

7 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
La.—Baggert v. State, 350 So. 2d 652 (La. 1977).
Nev.—Anaya v. State, 96 Nev. 119, 606 P.2d 156 (1980).

8 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Nev.—Anaya v. State, 96 Nev. 119, 606 P.2d 156 (1980).

Decision based upon erroneous information

Where a board of parole based its decision to revoke parole upon erroneous information that the parolee had been convicted of a felony, when, in fact, the conviction was for a misdemeanor, a mere correction of the record to reflect that the conviction was for a misdemeanor, without genuine reconsideration of the decision based upon that record, constituted a denial of due process.

U.S.—Tunks v. Sigler, 427 F. Supp. 455 (C.D. Cal. 1976).

9 La.—State ex rel. Bertrand v. Hunt, 308 So. 2d 760 (La. 1975).

10 La.—State ex rel. Bertrand v. Hunt, 325 So. 2d 788 (La. 1976).

11 Tex.—Ex parte Williams, 738 S.W.2d 257 (Tex. Crim. App. 1987).

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b. Revocation of Parole

(2) Notice and Final Hearing

§ 1795. Requisites and sufficiency of final parole revocation hearing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4838

Before a parolee's liberty can be taken and parole revoked, certain minimal due process requirements must be met in a final hearing.

A parole revocation hearing, being a critical proceeding at which the accused parolee's liberty is in jeopardy, must be conducted within the due process protections afforded by the federal and state constitutions.[1] Due process requires, among other things, that such a hearing be held before a neutral and detached hearing body, such as a traditional parole board, the members of which need not be judicial officers or lawyers.[2]

Furthermore, at a parole revocation hearing, due process requires the disclosure to the parolee of the evidence against the parolee.[3] The parolee also must be given an opportunity to be heard in person and present witnesses and documentary evidence,[4]

together with the opportunity to show, if possible, that the parolee did not violate the conditions of parole or that circumstances in mitigation suggest that the violation does not warrant revocation.[5]

A final parole revocation hearing should be flexible enough for the consideration of evidence such as letters, affidavits, and other material which would not be admissible in an adversary criminal trial.[6] However, the Due Process Clause guarantees the right to confront and cross-examine adverse witnesses[7] unless a hearing officer specifically finds good cause for not allowing confrontation.[8]

Footnotes

1 W. Va.—Southern v. Burgess, 198 W. Va. 518, 482 S.E.2d 135 (1996).
Limited due process requirements
Limited due process requirements, including notice and the opportunity to be heard, apply to the loss of liberty occasioned by parole revocation.
Mich.—Jones v. Department of Corrections, 468 Mich. 646, 664 N.W.2d 717 (2003).

2 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Idaho—State v. Scraggins, 153 Idaho 867, 292 P.3d 258 (2012).
Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).
Inclusion of parole officer as panel member
The inclusion of the parole officer, as a hearing panel member, is a due process violation where the parole officer recommended revocation.
Pa.—Blackwell v. Com., Pennsylvania Bd. of Probation and Parole, 101 Pa. Commw. 570, 516 A.2d 856 (1986).
Presence of parole officer at deliberations
Allowing the parole officer, who had recommended revocation of parole, to sit in on the parole board's deliberations regarding a parolee denied the parolee due process.
Alaska—Newell v. State, 620 P.2d 680 (Alaska 1980).

3 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Idaho—State v. Scraggins, 153 Idaho 867, 292 P.3d 258 (2012).
Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).
Establishing cause for nondisclosure
Due process requires that a parolee be afforded access to documents that will be introduced against the parolee at the revocation hearing, unless the parole board meets the burden of establishing good cause for their nondisclosure, such as that disclosure will lead to reprisals or substantially interfere with a pending criminal investigation involving allegations contained in the documentary record.
U.S.—U. S. ex rel. Carson v. Taylor, 540 F.2d 1156 (2d Cir. 1976).
Effect of prior knowledge
Where, although a defendant did not receive copies of some of the documents relied upon at his final parole revocation hearing, he was a party to the incidents reported in each of them and none of them presented evidence of which he had no prior knowledge, there was no due process violation.
U.S.—Stidham v. Wyrick, 567 F.2d 836 (8th Cir. 1977).

4 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Idaho—State v. Scraggins, 153 Idaho 867, 292 P.3d 258 (2012).
Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).

5 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); U. S. ex rel. Sims v. Sielaff, 563 F.2d 821 (7th Cir. 1977).
Or.—Morgan v. MacLaren School, Children's Services Division, 23 Or. App. 546, 543 P.2d 304 (1975).

6 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Neb.—State v. Shambley, 281 Neb. 317, 795 N.W.2d 884, 78 A.L.R.6th 655 (2011).
Use of transcript

In parole revocation proceedings, the accused was not denied due process by the court's use of the transcript of testimony of his key alibi witness at the criminal trial on the same charges.

U.S.—Standlee v. Rhay, 557 F.2d 1303 (9th Cir. 1977).

7 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Idaho—State v. Scraggins, 153 Idaho 867, 292 P.3d 258 (2012).

Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).

Vt.—Rodriguez v. Pallito, 195 Vt. 612, 2014 VT 18, 93 A.3d 102 (2014).

Polygraph test

Admission of the results of a polygraph test at a parole revocation hearing violated the defendant's due process rights, in a case in which no testimony was heard from the individual who administered the test and no evidence was introduced concerning how the test was conducted or its scientific reliability.

Me.—Ingerson v. State, 448 A.2d 879 (Me. 1982).

Confrontation Clause requirements

Out-of-court statements by witnesses that are testimonial are barred under the Confrontation Clause of the Sixth Amendment unless the witnesses are unavailable and the defendant had a prior opportunity to cross-examine the witnesses regardless of whether such statements are deemed reliable by the court; where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes, that is, confrontation.

U.S.—Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177, 63 Fed. R. Evid. Serv. 1077 (2004).

Failure to allow cross-examination or confrontation

The parole commission's due process violation in failing to give a parolee the opportunity to cross-examine or confront adverse witnesses as to the underlying facts relevant to any revocation decision, following a new conviction, requires a new revocation hearing, but the parolee does not have the right to a local hearing near the place of the alleged violation; rather, an institutional hearing would satisfy due process.

U.S.—John v. U.S. Parole Com'n, 122 F.3d 1278 (9th Cir. 1997).

8 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Idaho—State v. Scraggins, 153 Idaho 867, 292 P.3d 258 (2012).

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6. Revocation of Probation, Suspension of Sentence, or Parole

b. Revocation of Parole

(2) Notice and Final Hearing

§ 1796. Requisites and sufficiency of final parole revocation hearing—Time for hearing; representation by counsel

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4838

Due process requires that the parolee be given an opportunity for a revocation hearing within a reasonable time after the parolee is taken into custody. Due process does not require that counsel be provided for indigents in all parole revocation cases; rather, the decision as to the need for counsel must be made on a case-by-case basis.

Due process requires that a parolee be given an opportunity for a revocation hearing within a reasonable time after the parolee is taken into custody.[1] In determining whether a delay preceding a parolee's final revocation hearing violates due process, the court must consider the length of the delay, the reason for the delay,[2] the parolee's assertion of the parolee's right,[3] and any prejudice to the parolee.[4] In any event, however, a delay which is chargeable to the parolee does not violate due process.[5]

A parolee imprisoned for a crime committed while on parole is not entitled, under due process, to a prompt revocation hearing merely because a parole violator warrant has been issued and lodged with the institution of the parolee's confinement where the warrant will not be executed until the parolee has completed the sentence.[6] Furthermore, the failure to afford a revocation hearing until after a prisoner has been released from imprisonment for a crime committed while on parole does not deprive the prisoner of due process on the theory that the prisoner is deprived of the opportunity to serve the prisoner's sentences concurrently.[7]

Representation by counsel.

Due process generally does not require that the government provide counsel for indigent parolees in all parole revocation cases.[8] Rather, the decision as to the need for counsel must be made on a case-by-case basis,[9] and there are certain parole revocation cases in which due process will require that the State provide counsel at its expense for indigent parolees.[10] Due process requires that counsel be appointed to represent indigent parolees in those cases where the parolee has raised a colorable claim that the parolee has not committed the parole violation, or that there are substantial reasons which justified the violation or mitigated the violation, and that the reasons are too complex or otherwise difficult to develop.[11]

Footnotes

1 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Fla.—Proctor v. Wainwright, 408 So. 2d 793 (Fla. 1st DCA 1982).
La.—State v. Duncan, 396 So. 2d 297 (La. 1981).

2 U.S.—U. S. ex rel. Sims v. Sielaff, 563 F.2d 821 (7th Cir. 1977); Wells v. Wise, 390 F. Supp. 229 (C.D. Cal. 1975).

3 U.S.—U. S. ex rel. Sims v. Sielaff, 563 F.2d 821 (7th Cir. 1977).
N.Y.—People ex rel. Mallo v. Dalsheim, 67 A.D.2d 688, 412 N.Y.S.2d 159 (2d Dep't 1979).

4 U.S.—U. S. ex rel. Sims v. Sielaff, 563 F.2d 821 (7th Cir. 1977); McNeal v. U.S., 553 F.2d 66 (10th Cir. 1977).
La.—State v. Duncan, 396 So. 2d 297 (La. 1981).

5 N.Y.—People ex rel. Martinez v. New York State Bd. of Parole, 56 N.Y.2d 588, 450 N.Y.S.2d 305, 435 N.E.2d 675 (1982).

6 U.S.—Moody v. Daggett, 429 U.S. 78, 97 S. Ct. 274, 50 L. Ed. 2d 236 (1976); Pugliese v. Nelson, 617 F.2d 916 (2d Cir. 1980); McNeal v. U.S., 553 F.2d 66 (10th Cir. 1977).
S.D.—Bush v. Canary, 286 N.W.2d 536 (S.D. 1979).

7 U.S.—Furrow v. U.S. Bd. of Parole, 418 F. Supp. 1309 (D. Me. 1976).

8 U.S.—Gagnon v. Scarpelli, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973).
W. Va.—Dobbs v. Wallace, 157 W. Va. 405, 201 S.E.2d 914 (1974).

9 U.S.—Gagnon v. Scarpelli, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973).

10 U.S.—Gagnon v. Scarpelli, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973); U.S. v. Farmer, 512 F.2d 160 (6th Cir. 1975).
La.—Baggert v. State, 350 So. 2d 652 (La. 1977).

11 Iowa—Pfister v. Iowa Dist. Court For Polk County, 688 N.W.2d 790 (Iowa 2004).

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J. Judgment, Sentence, and Punishment; Appeal and Error

6. Revocation of Probation, Suspension of Sentence, or Parole

b. Revocation of Parole

(2) Notice and Final Hearing

§ 1797. Findings and statement at final parole revocation hearing; judgment or order and sentence

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4838

Due process requires a written statement by the fact finders as to the evidence relied on and the reasons for revoking parole, after the initial determination that a condition of parole has been violated. Due process also requires that alternatives to incarceration consonant with the protection of society and the rehabilitation of the parolee be considered.

Due process requires, with respect to revocation of parole, a written statement by the fact finders as to the evidence relied on and the reasons for revoking parole.[1] If a parole revocation is based on grounds other than those stated in the notice to the parolee of alleged parole violations as grounds for revocation, due process is violated.[2]

Furthermore, due process requires that the report of the hearing officer who conducted the final parole revocation hearing be made available to the parolee and that the parolee be given an opportunity to correct any mistakes that may appear in the report.[3]

Judgment or order and sentence.

After the initial determination that a condition of parole has been violated, due process requires that alternatives to incarceration consonant with the protection of society and the rehabilitation of the parolee be considered.[4] Where incarceration is appropriate, a statute which provides for the recomputation of the sentences of convicted parole violators does not violate due process rights.[5] Moreover, provisionally refixing an indeterminate sentence at the maximum term prior to a parole revocation hearing does not violate due process if at the revocation hearing consideration is given to whether the term should be refixed at the maximum.[6]

A parolee's due process rights are not violated by denying the parolee credit for the time that the parolee spent on parole, upon the resumption of the parolee's original sentence after parole has been revoked.[7]

Timely service of decision.

A delay between a parole revocation hearing and the distribution of a written decision is not a per se due process violation.[8] Such a delay constitutes a due process violation only if it is fundamentally unfair.[9]

Footnotes

1 U.S.—Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).
Idaho—State v. Scraggins, 153 Idaho 867, 292 P.3d 258 (2012).
Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).
Miss.—Elkins v. State, 116 So. 3d 185 (Miss. Ct. App. 2013).
Inclusion of all factors considered
Due process is best served by inclusion of all factors, both positive and negative, that were balanced by the parole commission in its decision to revoke parole.
U.S.—Carpenter v. U.S. Parole Commission, 475 F. Supp. 120 (C.D. Cal. 1979).

2 U.S.—U. S. ex rel. Carson v. Taylor, 540 F.2d 1156 (2d Cir. 1976); Kloner v. U.S., 535 F.2d 730 (2d Cir. 1976); Atkins v. Marshall, 533 F. Supp. 1324 (S.D. Ohio 1982).
Consideration of subsequent conviction
Although any mention of an arrest for attempted burglary had been dropped from the original parole violation complaint at the probable cause hearing, consideration of a subsequent conviction at the final revocation hearing did not violate due process.
U.S.—Martineau v. Perrin, 601 F.2d 1201 (1st Cir. 1979).

3 N.J.—Underwood v. New Jersey State Parole Bd., 131 N.J. Super. 528, 330 A.2d 624 (App. Div. 1974).

4 Mo.—Sincup v. Blackwell, 608 S.W.2d 389 (Mo. 1980); Abel v. Wyrick, 574 S.W.2d 411 (Mo. 1978).

5 Pa.—Kuykendall v. Pennsylvania Bd. of Probation and Parole, 26 Pa. Commw. 234, 363 A.2d 866 (1976).

6 Cal.—In re Winn, 13 Cal. 3d 694, 119 Cal. Rptr. 496, 532 P.2d 144 (1975).

7 U.S.—Cooks v. U.S. Bd. of Parole, Washington, D. C., 447 F.2d 63 (5th Cir. 1971); Firkins v. State of Colo., 434 F.2d 1232 (10th Cir. 1970).
Pa.—Gaito v. Pennsylvania Bd. of Probation and Parole, 488 Pa. 397, 412 A.2d 568 (1980).

8 Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).

9 Mass.—Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 18 N.E.3d 1096 (2014).

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XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

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Research References

A.L.R. Library

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West's A.L.R. Digest, Constitutional Law 4335, 4337, 4338, 4340 to 4342, 4344, 4345, 4781 to 4785, 4823, 4828

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XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

1. In General

§ 1798. Confinement, examination, and commitment of mentally disordered or addicted defendants, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4335, 4337, 4738

Proceedings after conviction to determine medical facts for the purpose of establishing sentencing alternatives are nonadversary in nature and do not require a jury trial to satisfy due process.

Proceedings after conviction under a statute to determine medical facts for the purpose of establishing sentencing alternatives are nonadversary in nature and do not require a jury trial to satisfy due process.[1]

In a proceeding to involuntarily commit defendant as a mentally ill, dangerous person, to comply with due process, there must be a finding that the subject is mentally ill as well as a finding that the person is dangerous, either to him- or herself or to others, and that there is a substantial likelihood that dangerous behavior will be engaged in unless restraints are applied.[2]

Where a person is confined in a state prison hospital for psychiatric treatment, the treatment cannot be impaired by the imposition of discipline without due process.[3]

Parolee.

The involuntary commitment of a parolee to a mental institution must comport with the fundamental standards of due process,[4] including granting, and written notice, of a hearing.[5]

Confinement in prison.

A guilty but mentally ill statutory scheme, under which a defendant found "guilty but mentally ill" may be sentenced to the state penitentiary, is not violative of due process merely because psychiatric treatment is not assured.[6] Such statutes are rationally designed to accomplish the purposes of reducing the number of defendants being completely relieved of criminal responsibility and insuring that mentally ill inmates receive treatment, for their benefit as well as society's benefit, while incarcerated.[7]

An individual has a protected liberty interest under the Due Process Clause in avoiding involuntary administration of antipsychotic drugs, an interest that only an essential or overriding state interest might overcome.[8]

Footnotes

1 Ohio—State v. Abner, 43 Ohio App. 2d 141, 72 Ohio Op. 2d 355, 334 N.E.2d 530 (8th Dist. Cuyahoga County 1974).

2 Neb.—In re Interest of Blythman, 208 Neb. 51, 302 N.W.2d 666 (1981).

3 U.S.—Negron v. Ward, 458 F. Supp. 748 (S.D. N.Y. 1978).

4 Ohio—Anderson v. McMillan, 44 Ohio App. 2d 50, 73 Ohio Op. 2d 50, 335 N.E.2d 719 (8th Dist. Cuyahoga County 1975).
As to due process requirements with respect to parole, see § 1782.

5 Ohio—Anderson v. McMillan, 44 Ohio App. 2d 50, 73 Ohio Op. 2d 50, 335 N.E.2d 719 (8th Dist. Cuyahoga County 1975).

6 S.D.—Robinson v. Solem, 432 N.W.2d 246 (S.D. 1988).

7 S.C.—State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997).

8 U.S.—U.S. v. Hardy, 724 F.3d 280 (2d Cir. 2013); Disability Rights New Jersey, Inc. v. Velez, 974 F. Supp. 2d 705 (D.N.J. 2013).
Conn.—State v. Seekins, 299 Conn. 141, 8 A.3d 491 (2010).

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XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

1. In General

§ 1799. Insanity at time of offense

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4337, 4514

In a criminal prosecution, where the issue as to whether the accused was insane at the time of the commission of an offense is raised, the due process clause requires that there be an adjudication as to such issue.

In a criminal prosecution, where the issue as to whether the accused was insane at the time of the commission of an offense is raised, the due process clause requires that there be an adjudication as to such issue.[1] The use of the M'Naghten rule as the test of criminal responsibility does not deny defendant the right to due process;[2] also, due process is not denied where there is a failure to apply the "true" M'Naghten rule.[3] There is no federal due process right to any particular insanity defense.[4]

Failure by a trial judge, who is presented with a psychiatric report stating that defendant was probably insane at the time of the crime, to inquire fully into the sanity problem amounts to a deprivation of due process.[5] On the other hand, due process does not require the jury to accept psychiatrists' conclusions, formulated after only one interview, that defendant was mentally incompetent at the time of the offense charged.[6]

Funds for psychologist.

The trial court's denial of funds to defendant for purposes of employing a psychologist to prove the defendant's mental condition at the time of the alleged crime does not deprive defendant of due process of law.[7]

Footnotes

1 Utah—State v. Herrera, 1999 UT 64, 993 P.2d 854 (Utah 1999).
Statute held unconstitutional
State due process clause mandates unconstitutionality of statutory provision empowering grand jury to decline to indict if it is convinced that accused is insane and to certify accused to court as insane where: (1) grand jury proceedings are secret and without adversaries; (2) cross-examination of witnesses does not take place; (3) written record from which appeal may be taken is not required; (4) accused may be compelled to appear without benefit of counsel present; (5) hearsay evidence is considered; and (6) probable cause, rather than proof beyond reasonable doubt, is standard by which determinations are made.
N.H.—Novosel v. Helgemoe, 118 N.H. 115, 384 A.2d 124 (1978).

2 U.S.—U.S. v. Powell, 325 F. Supp. 333 (E.D. Pa. 1971).
Ariz.—State v. Steelman, 120 Ariz. 301, 585 P.2d 1213 (1978).
Okla.—Jones v. State, 1982 OK CR 112, 648 P.2d 1251 (Okla. Crim. App. 1982).
Wash.—State v. Myers, 6 Wash. App. 557, 494 P.2d 1015 (Div. 1 1972).

3 Wash.—State v. Thomas, 8 Wash. App. 495, 507 P.2d 153 (Div. 1 1973).

4 Utah—State v. Herrera, 1999 UT 64, 993 P.2d 854 (Utah 1999).

5 U.S.—Mendenhall v. Hopper, 453 F. Supp. 977 (S.D. Ga. 1978), aff'd, 591 F.2d 1342 (5th Cir. 1979).

6 U.S.—Lee v. Thompson, 452 F. Supp. 165 (E.D. Tenn. 1977), aff'd, 577 F.2d 741 (6th Cir. 1978).

7 Ark.—Earl v. State, 272 Ark. 5, 612 S.W.2d 98 (1981).

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XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

2. Incompetence to Stand Trial

§ 1800. Incompetence to stand trial, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4781, 4782, 4783(1), 4783(2)

The due process clause forbids the trial or conviction of an accused person who is not competent to stand trial.

The due process clause prohibits the prosecution,[1] trial,[2] or conviction[3] of an accused person who is not competent to stand trial, and defendant's due process rights are violated if the defendant is subjected to trial,[4] convicted,[5] or sentenced[6] while incompetent. Indeed, due to the risk that a defendant may be convicted without being able to assist in the defendant's own defense, due process mandates that the trial process stop if a defendant is found incompetent.[7] Thus, due process requires that states adopt adequate anticipatory measures to minimize the risk that an incompetent person may be tried and convicted.[8]

Where the procedure for determination of insanity is in compliance with statute, the court's adjudication that an accused is competent to stand trial is not a denial of due process,[9] but failure to observe procedures adequate to protect an accused's right not to be tried or convicted while incompetent to stand trial is a denial of due process.[10]

Where there is genuine doubt as to defendant's competency to stand trial, due process requires that the trial court conduct a hearing on defendant's present sanity,[11] sua sponte or on its own motion.[12] So, where genuine doubt as to a defendant's competency exists, failure to hold a hearing to determine competency abridges the defendant's right to due process,[13] but where the facts do not raise reasonable doubt about such competency, failure to hold a hearing does not constitute a denial of due process.[14]

A state law abolishing the insanity defense but allowing the consideration of a defendant's mental disease or defect in the determination of fitness to stand trial does not violate a defendant's right to due process.[15]

Bifurcated trial.

A statutory bifurcated trial system for the adjudication of guilt and insanity in criminal trials has been held unconstitutional by reason of violating due process requirements.[16]

Right to counsel.

Due process requires that a defendant whose competency to stand trial is at issue must be entitled to counsel[17] and counsel's effective assistance.[18]

CUMULATIVE SUPPLEMENT

Cases:

For individuals who have been evaluated and found incompetent to stand trial, but are awaiting treatment, waiting in jail for weeks or months violates due process rights because the nature and duration of their incarceration bear no reasonable relation to the evaluative and restorative purposes for which courts commit those individuals. U.S.C.A. Const.Amend. 14. Trueblood v. Washington State Dept. of Social and Health Services, 822 F.3d 1037 (9th Cir. 2016).

Case would be remanded to the trial court to conduct competency hearing, and if, on remand, the evidence indicated that defendant was competent at the time of trial, the trial court could make that determination nunc pro tunc and reimpose defendant's conviction and sentence on remand; however, if not, the trial court had to adjudicate defendant's current competency and conduct a new trial only if it found defendant competent. Fla. R. Crim. P. 3.210, 3.211, 3.212. Raithel v. State, 226 So. 3d 1028 (Fla. 4th DCA 2017).

The due process prohibition against convicting a defendant who is incompetent to stand trial helps to protect the accuracy and reliability of criminal and delinquency proceedings by ensuring that criminal defendants and juveniles have the ability and opportunity to communicate information to others that may reveal their innocence or lessen their degree of guilt, and safeguards other constitutional rights, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so. U.S. Const. Amends. 5, 6, 14; Mass. Const. pt. 1, art. 12. Matter of Juvenile, 485 Mass. 831, 152 N.E.3d 1128 (2020).

It is a violation of a criminal defendant's right to due process to try or convict him while he is incompetent, because such action fundamentally impinges upon his right to a fair trial. U.S.C.A. Const.Amend. 14. Hollie v. State, 174 So. 3d 824 (Miss. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Conn.—State v. Dort, 315 Conn. 151, 106 A.3d 277 (2014).
Md.—Sibug v. State, 219 Md. App. 358, 100 A.3d 1245 (2014).
Mont.—State v. White, 2014 MT 335, 377 Mont. 332, 339 P.3d 1243 (2014).
Wash.—State v. P.E.T., 344 P.3d 689 (Wash. Ct. App. Div. 1 2015).

2 Cal.—Bryan E. v. Superior Court, 231 Cal. App. 4th 385, 179 Cal. Rptr. 3d 739 (2d Dist. 2014), as modified, (Nov. 12, 2014).
Tenn.—State v. Reid, 164 S.W.3d 286 (Tenn. 2005).
Fundamental right
The right not to be tried while mentally incompetent is a fundamental due process right.
La.—State in Interest of Brown, 385 So. 2d 382 (La. Ct. App. 1st Cir. 1980).

3 U.S.—U.S. v. Gillette, 60 V.I. 855, 738 F.3d 63 (3d Cir. 2013), cert. denied, 134 S. Ct. 2714, 189 L. Ed. 2d 753 (2014).
Cal.—People v. Hung Thanh Mai, 57 Cal. 4th 986, 161 Cal. Rptr. 3d 1, 305 P.3d 1175 (2013).
Ga.—Humphrey v. Walker, 294 Ga. 855, 757 S.E.2d 68 (2014).

4 U.S.—Ryan v. Gonzales, 133 S. Ct. 696, 184 L. Ed. 2d 528 (2013).
Miss.—Smith v. State, 149 So. 3d 1027 (Miss. 2014).
Tex.—George v. State, 446 S.W.3d 490 (Tex. App. Houston 1st Dist. 2014), petition for discretionary review refused, (Feb. 4, 2015).
Wis.—State v. Smith, 2014 WI App 98, 357 Wis. 2d 582, 855 N.W.2d 422 (Ct. App. 2014).
Prior adjudication of insanity
Where defendant had been adjudicated insane and adjudication had never been dissolved, and where defense counsel raised the issue of defendant's competency to stand trial, defendant was denied due process when the state court ignored a presumption that defendant was insane at the time of trial and left it up to defense counsel whether to raise before the jury any question of defendant's mental condition.
U.S.—Bumgarner v. Lockhart, 361 F. Supp. 829 (E.D. Ark. 1973).

5 Alaska—Gamble v. State, 334 P.3d 714 (Alaska Ct. App. 2014).
Cal.—People v. Sattiewhite, 59 Cal. 4th 446, 174 Cal. Rptr. 3d 1, 328 P.3d 1 (2014).
Miss.—Smith v. State, 149 So. 3d 1027 (Miss. 2014).

6 U.S.—Massey v. Moore, 348 U.S. 105, 75 S. Ct. 145, 99 L. Ed. 135 (1954).
Ill.—People v. Jackson, 91 Ill. App. 3d 595, 47 Ill. Dec. 59, 414 N.E.2d 1175 (1st Dist. 1980).
Mass.—Com. v. Simpson, 428 Mass. 646, 704 N.E.2d 1131 (1999).
Me.—State v. Dyer, 371 A.2d 1079 (Me. 1977).
Wash.—State v. Wright, 19 Wash. App. 381, 575 P.2d 740 (Div. 3 1978).

7 D.C.—Nero v. District of Columbia, 936 A.2d 310 (D.C. 2007).
Pa.—Com. v. Haag, 570 Pa. 289, 809 A.2d 271 (2002).

8 La.—State v. Martin, 769 So. 2d 1168 (La. 2000).
Standard
The standard for assessing whether a state's procedure for determining competency comports with due process is whether the procedure affords a criminal defendant on whose behalf a plea of incompetence is asserted a reasonable opportunity to demonstrate that the defendant is not competent to stand trial; the due process clause does not require the State to adopt one procedure over another on the basis that it may produce results more favorable to accused.
Kan.—State v. Barnes, 263 Kan. 249, 948 P.2d 627 (1997).

9 Ariz.—State v. Ferguson, 26 Ariz. App. 285, 547 P.2d 1085 (Div. 2 1976).
Cal.—People v. Pacheco, 258 Cal. App. 2d 800, 66 Cal. Rptr. 142 (2d Dist. 1968).
Ky.—Ragland v. Com., 515 S.W.2d 224 (Ky. 1974).
Wash.—Young v. Smith, 8 Wash. App. 276, 505 P.2d 824 (Div. 2 1973).

10 U.S.—U.S. v. Garza, 751 F.3d 1130 (9th Cir. 2014), subsequent determination, 573 Fed. Appx. 670 (9th Cir. 2014).
Mich.—U.S. v. Garza, 751 F.3d 1130 (9th Cir. 2014), subsequent determination, 573 Fed. Appx. 670 (9th Cir. 2014).
Ohio—State v. Rodeffer, 2013-Ohio-5759, 5 N.E.3d 1069 (Ohio Ct. App. 2d Dist. Montgomery County 2013).
Utah—State v. Wolf, 2014 UT App 18, 319 P.3d 757 (Utah Ct. App. 2014).

11 U.S.—Drope v. Missouri, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975); Rosenthal v. O'Brien, 713 F.3d 676 (1st Cir. 2013), cert. denied, 134 S. Ct. 434, 187 L. Ed. 2d 292 (2013).
Cal.—People v. Rodriguez, 58 Cal. 4th 587, 168 Cal. Rptr. 3d 380, 319 P.3d 151 (2014).
Conn.—State v. Dort, 315 Conn. 151, 106 A.3d 277 (2014).
N.C.—State v. Chukwu, 749 S.E.2d 910 (N.C. Ct. App. 2013).

Factors considered

Three factors are to be considered in determining whether defendant's due process right to an adequate hearing on competency to stand trial has been violated: (1) any history of irrational behavior, (2) defendant's trial demeanor, and (3) prior medical opinion.
U.S.—Sturgeon v. Chandler, 552 F.3d 604 (7th Cir. 2009).

12 U.S.—Rosenthal v. O'Brien, 713 F.3d 676 (1st Cir. 2013), cert. denied, 134 S. Ct. 434, 187 L. Ed. 2d 292 (2013).
N.C.—State v. Chukwu, 749 S.E.2d 910 (N.C. Ct. App. 2013).

13 U.S.—Pate v. Robinson, 383 U.S. 375, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966).
Kan.—State v. White, 263 Kan. 283, 950 P.2d 1316 (1997).
Mont.—State v. Bartlett, 282 Mont. 114, 935 P.2d 1114 (1997).
N.D.—State v. Gleeson, 2000 ND 205, 619 N.W.2d 858 (N.D. 2000).
Tex.—Ex parte Johnston, 587 S.W.2d 163 (Tex. Crim. App. 1979).

Focus of review

In determining whether the trial court denied due process in refusing a competency hearing, the focus should be on what the trial court did in light of what it then knew of defendant.
Utah—Jacobs v. State, 2001 UT 17, 20 P.3d 382 (Utah 2001).

14 U.S.—Lindhorst v. U.S., 658 F.2d 598 (8th Cir. 1981).
Ill.—People v. Mireles, 79 Ill. App. 3d 173, 34 Ill. Dec. 475, 398 N.E.2d 150 (1st Dist. 1979).
Ky.—Gilbert v. Com., 575 S.W.2d 455 (Ky. 1978).
Nev.—French v. State, 95 Nev. 586, 600 P.2d 218 (1979).

Acceptance of guilty plea

The trial court's improper denial of a capital defendant's request for competency hearing did not violate due process, where, in accepting defendant's guilty plea, the court implicitly found him competent, and the record demonstrated that the court's finding was not an abuse of discretion.
Conn.—State v. Johnson, 253 Conn. 1, 751 A.2d 298 (2000).

15 Mont.—State v. Cowan, 260 Mont. 510, 861 P.2d 884 (1993).

16 Fla.—Morgan v. State, 392 So. 2d 1315 (Fla. 1981).

17 U.S.—Massey v. Moore, 348 U.S. 105, 75 S. Ct. 145, 99 L. Ed. 135 (1954).
Cal.—In re Hawley, 67 Cal. 2d 824, 63 Cal. Rptr. 831, 433 P.2d 919 (1967).
Assistance of counsel in criminal proceedings, generally, as required by due process, see § 1680 et seq.

18 U.S.—Evans v. Kropp, 254 F. Supp. 218 (E.D. Mich. 1966).

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16C C.J.S. Constitutional Law § 1801

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Constitutional Law
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PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

2. Incompetence to Stand Trial

§ 1801. Determination of competency

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4782, 4783, 4783(1) to 4783(5)

A procedure to determine a defendant's competency to stand trial must comport with due process requirements.

Determination of a defendant's fitness to proceed must meet procedural due process requirements.[1] However, due process does not require a specific procedure to determine defendant's competency to stand trial,[2] and various procedures have been held to satisfy due process requirements.[3] Indeed, due process in a competency hearing requires that only the most basic procedural safeguards be observed.[4]

Where a hearing on the issue of defendant's sanity is required, the hearing must be an evidentiary one conforming to due process requirements.[5] A competency hearing at which defendant is granted the assistance of counsel, fair and adequate notice, the confrontation and cross-examination of witnesses, and a decision by a fair and impartial tribunal based on the evidence and applicable rules of the law does not deny defendant due process.[6] The record must contain a judgment, order, docket entry, or other evidence that the trial court actually made a determination of competency.[7]

Failure by the trial judge to order further examination and hearing to determine defendant's competency to stand trial does not deprive defendant of due process where defendant has been found fit to stand trial in a prior hearing, and no additional facts warrant further examination or hearing.[8] Likewise, where defendant has been committed and examined relevant to defendant's capacity to proceed, and all evidence before the court indicates that defendant has that capacity, defendant is not denied due process by the trial judge's failure to hold a hearing subsequent to the commitment proceedings.[9]

Psychiatric examination.

Due process does not require the trial judge automatically to order a psychiatric examination when the question is raised concerning defendant's capacity to proceed,[10] but where a psychiatric examination is ordered, it must be adequate so as not to deny defendant due process of law.[11] The court cannot impose, as a requirement of procedural due process with respect to a statute providing for court-appointed experts to testify concerning defendant's insanity, that the physicians appointed to examine defendant possess special competency in psychiatry or psychology.[12]

Where an indigent has already been examined for the purpose of determining whether the defendant is competent to stand trial according to the prescribed state procedure, there is no due process right to appoint a state-paid psychiatrist to evaluate defendant.[13] Also, after an indigent accused is examined by a court-appointed psychiatrist who determines the indigent's competency to stand trial, a refusal to appoint another psychiatrist chosen by the accused,[14] or to give defendant an additional examination without cost to the defendant,[15] is not a denial of due process.

Test of competency.

Since due process requires a level of effective participation by the accused,[16] the due process test for determining a defendant's mental competency to stand trial depends upon whether the defendant has sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against the defendant.[17]

Where defendant is unable to recall events during a crucial period, the question becomes whether a trial would be unfair in a due process sense because of defendant's amnesia, but such question can only be determined on a case-by-case basis.[18]

Burden of proof.

It has been held that once the issue of defendant's competency to stand trial has been raised, due process requires that the government prove the fitness of defendant to stand trial by a preponderance of the evidence.[19] On the other hand, there are authorities holding that it is not a denial of due process to require defendant to bear the burden of establishing incompetence to stand trial.[20]

CUMULATIVE SUPPLEMENT

Cases:

Commitment of defendant to custody of Attorney General for psychiatric treatment and evaluation to determine if he could regain competency to stand trial did not violate defendant's fundamental due process liberty interest in freedom from restraint; although psychiatric report painted bleak picture of defendant's mental health, evaluation was limited, prognostic opinions

in every instance were conditional, and defendant's continued detention was reasonably related to resolving open questions regarding likelihood that defendant would regain competency to stand trial in foreseeable future. U.S. Const. Amend. 5; 18 U.S.C.A. § 4241(d). United States v. Brennan, 928 F.3d 210 (2d Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Haw.—State v. Janto, 92 Haw. 19, 986 P.2d 306 (1999).

2 Haw.—State v. Raitz, 63 Haw. 64, 621 P.2d 352 (1980).
Ill.—People v. Mitchell, 189 Ill. 2d 312, 245 Ill. Dec. 1, 727 N.E.2d 254 (2000).
Me.—State v. Wallace, 333 A.2d 72 (Me. 1975).

3 Haw.—State v. Raitz, 63 Haw. 64, 621 P.2d 352 (1980).
Me.—State v. Wallace, 333 A.2d 72 (Me. 1975).

4 U.S.—Black v. Bell, 664 F.3d 81 (6th Cir. 2011).

5 Ky.—Via v. Com., 522 S.W.2d 848 (Ky. 1975).
Meaningful hearing
In order to satisfy the requirements of due process, a meaningful hearing must be afforded all criminally accused persons alleged to be mentally incompetent to stand trial who contest the validity of a psychiatric report regarding their mental condition.
Wis.—State ex rel. Matalik v. Schubert, 57 Wis. 2d 315, 204 N.W.2d 13 (1973).

6 U.S.—U.S. v. Tesfa, 404 F. Supp. 1259 (E.D. Pa. 1975), judgment aff'd, 544 F.2d 138, 1 Fed. R. Evid. Serv. 387 (3d Cir. 1976).

7 Tex.—Cooper v. State, 333 S.W.3d 859 (Tex. App. Fort Worth 2010), petition for discretionary review refused, (Apr. 20, 2011).

8 S.C.—State v. Drayton, 270 S.C. 582, 243 S.E.2d 458 (1978).

9 N.C.—State v. Young, 291 N.C. 562, 231 S.E.2d 577 (1977).

10 Ga.—Beardsley v. State, 149 Ga. App. 531, 254 S.E.2d 715 (1979).
Mo.—State ex rel. Jordon v. Mehan, 597 S.W.2d 724 (Mo. Ct. App. E.D. 1980).
N.C.—State v. Taylor, 298 N.C. 405, 259 S.E.2d 502 (1979).
Independent inquiry
The independent inquiry into a defendant's competence to stand trial required by due process whenever an allegation of incompetence has been made is a hearing before the court, not an independent psychiatric evaluation as provided by statute.
Conn.—State v. Ross, 269 Conn. 213, 849 A.2d 648 (2004).

11 **Due process not denied**
U.S.—Hinkle v. Scurr, 677 F.2d 667 (8th Cir. 1982).

12 Ind.—James v. State, 261 Ind. 495, 307 N.E.2d 59 (1974).

13 Okla.—Kaulaity v. State, 1975 OK CR 90, 536 P.2d 1006 (Okla. Crim. App. 1975).

14 Colo.—Massey v. District Court In and For Tenth Judicial Dist., 180 Colo. 359, 506 P.2d 128 (1973).
Okla.—Stidham v. State, 1973 OK CR 143, 507 P.2d 1312 (Okla. Crim. App. 1973).
Or.—State v. Glover, 33 Or. App. 553, 577 P.2d 91 (1978).

15 Mo.—State v. Sturdivan, 497 S.W.2d 139 (Mo. 1973) (disapproved of on other grounds by, State v. Anderson, 515 S.W.2d 534 (Mo. 1974)).

16 Alaska—Kostic v. Smedley, 522 P.2d 535 (Alaska 1974).
La.—State v. Hamilton, 373 So. 2d 179 (La. 1979).

17 U.S.—Drope v. Missouri, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975); McManus v. Neal, 779 F.3d 634 (7th Cir. 2015).
Definition

The statutory definition of competence, requiring defendant to be able to understand the nature of the proceedings, satisfied the due process requirement that defendant possess a rational as well as factual understanding of the proceedings against defendant.

Okla.—Valdez v. State, 1995 OK CR 18, 900 P.2d 363 (Okla. Crim. App. 1995).

18 U.S.—U.S. v. Stevens, 461 F.2d 317 (7th Cir. 1972).

Fla.—Robbins v. State, 312 So. 2d 243 (Fla. 2d DCA 1975).

Mass.—Com. v. Lombardi, 378 Mass. 612, 393 N.E.2d 346 (1979).

19 U.S.—U. S. ex rel. Bilyew v. Franzen, 686 F.2d 1238 (7th Cir. 1982).

Ill.—People v. Miller, 92 Ill. App. 3d 1148, 48 Ill. Dec. 492, 416 N.E.2d 765 (3d Dist. 1981).

Violation

Holding a criminal defendant to a clear and convincing burden to prove incompetence is a violation of due process.

S.C.—Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 335 (2004).

20 Cal.—People v. Ary, 51 Cal. 4th 510, 120 Cal. Rptr. 3d 431, 246 P.3d 322 (2011).

Ga.—Page v. State, 313 Ga. App. 691, 722 S.E.2d 408 (2012).

Wash.—State v. Coley, 180 Wash. 2d 543, 326 P.3d 702 (2014), cert. denied, 135 S. Ct. 1444 (2015).

Allocation of burden

Allocation of the burden of proof to a criminal defendant to prove incompetence to stand trial does not offend the Fourteenth Amendment.

Miss.—Evans v. State, 725 So. 2d 613 (Miss. 1997).

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16C C.J.S. Constitutional Law § 1802

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PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

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K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

2. Incompetence to Stand Trial

§ 1802. Determination of competency—Retrospective hearing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4783(1)

Defendant's due process rights are not necessarily violated by a retrospective hearing on the defendant's competence to stand trial; whether a retrospective competency hearing satisfies due process requirements depends on the facts of each case.

Defendant's due process rights are not necessarily violated by a retrospective hearing on the defendant's competence to stand trial.[1] However, retrospective hearings will normally be inadequate to protect a defendant's due process rights when more than a year has passed since the original trial and sentencing.[2] A retrospective competency hearing satisfies the requirements of due process provided it is based upon evidence related to observations made or knowledge possessed at the time of trial;[3] the quantity and quality of available evidence should be adequate to arrive at an assessment that can be labeled as more than mere speculation.[4]

Whether a retrospective competency hearing satisfies due process requirements depends on the facts of each case.[5]

CUMULATIVE SUPPLEMENT

Cases:

Where a circuit court grants a criminal defendant's motion for appointment of an expert for competency examination but fails to hold a hearing prior to trial or enter a written finding on defendant's competency, the case will be remanded and if on remand the circuit court determines a nunc pro tunc competency determination is possible, and the court finds that the defendant was incompetent at the time of judgment and remains incompetent, the court must vacate the defendant's conviction and sentence, the appeal will be dismissed as moot, and the circuit court must then proceed in accordance with the rules of criminal procedure addressing incompetent defendants. Fla. R. Crim. P. 3.212, 3.215. Courtney Hines v. State, 287 So. 3d 617 (Fla. 4th DCA 2019).

[END OF SUPPLEMENT]

Footnotes

1 Ariz.—State v. Blazak, 110 Ariz. 202, 516 P.2d 575 (1973).
Mo.—Carroll v. State, 603 S.W.2d 66 (Mo. Ct. App. S.D. 1980).
Okla.—Tate v. State, 1995 OK CR 24, 896 P.2d 1182 (Okla. Crim. App. 1995).
Tex.—Caballero v. State, 587 S.W.2d 741 (Tex. Crim. App. 1979).

2 Ill.—People v. Esang, 396 Ill. App. 3d 833, 336 Ill. Dec. 356, 920 N.E.2d 565 (1st Dist. 2009).

3 U.S.—Pate v. Smith, 637 F.2d 1068 (6th Cir. 1981).
Ky.—Johnson v. Com., 103 S.W.3d 687 (Ky. 2003).

4 Ky.—Johnson v. Com., 103 S.W.3d 687 (Ky. 2003).
Delay
A 12-year delay in a hearing on competency to stand trial, despite an order by the court, the lack of psychological testing contemporaneous with the trial, and the State's own evidence that a retroactive competency determination was impossible, established an inability to provide a meaningful retrospective competency determination in compliance with due process and, therefore, entitled defendant to a decision to vacate his conviction and sentence; the delay was not defendant's fault, and no reason was shown for it.
Fla.—Jones v. State, 740 So. 2d 520 (Fla. 1999).

5 Mich.—People v. Oliphant, 52 Mich. App. 242, 217 N.W.2d 141 (1974), judgment aff'd, 399 Mich. 472, 250 N.W.2d 443 (1976).
Factors considered
Among the factors considered in assessing whether a meaningful retrospective competency determination can be made consistent with a defendant's due process rights are (1) passage of time; (2) the availability of contemporaneous medical evidence, including medical records and prior competency determinations; (3) any statements made by the defendant in the trial record; and (4) the availability of individuals and trial witnesses, both experts and nonexperts, who were in a position to interact with the defendant before and during the trial.
D.C.—Blakeney v. U.S., 77 A.3d 328 (D.C. 2013), cert. denied, 135 S. Ct. 689, 190 L. Ed. 2d 392 (2014).

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16C C.J.S. Constitutional Law § 1803

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K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

2. Incompetence to Stand Trial

§ 1803. Use of antipsychotic drugs

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4785

The Fifth Amendment Due Process Clause permits the government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial.

Forced medication in order to stand trial for a serious crime may be constitutionally permissible where there is an essential or overriding state interest.[1] The Fifth Amendment Due Process Clause permits the government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial but only if the treatment: (1) is medically appropriate; (2) is substantially unlikely to have side effects that may undermine the fairness of the trial; and (3) taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests.[2] The government must satisfy these factors by clear and convincing evidence.[3] These factors do not represent a balancing test, but a set of independent requirements, each of which must be found to be true before the forcible administration of psychotropic drugs may be considered constitutionally permissible.[4] Because of the important liberty interests at stake, to comport with due process, an order compelling involuntary administration of antipsychotic medication requires thorough consideration and justification and especially careful scrutiny and must be based on a medically informed record.[5]

Due process clause does not condition a "*Sell* order," i.e., an order for the involuntary administration of medication to restore a hospitalized defendant's competence to stand trial, on a psychiatric guarantee of success.[6]

Footnotes

1 U.S.—U.S. v. Rix, 574 F. Supp. 2d 726 (S.D. Tex. 2008).

2 U.S.—Sell v. U.S., 539 U.S. 166, 123 S. Ct. 2174, 156 L. Ed. 2d 197, 188 A.L.R. Fed. 679 (2003).
Cal.—People v. Coleman, 208 Cal. App. 4th 627, 145 Cal. Rptr. 3d 329 (1st Dist. 2012).
Fla.—Smith v. State, 145 So. 3d 189 (Fla. 4th DCA 2014).
Alleviation of danger
There are three findings required before criminal defendant may, under due process clauses of state and federal constitutions, be involuntarily medicated with antipsychotic drugs to alleviate danger posed by defendant: (1) that defendant actually poses a danger of physical harm to him- or herself or others; (2) that treatment with antipsychotic medication is medically appropriate, that is, in defendant's medical interest; and (3) that, considering less intrusive alternatives, treatment is essential to forestall danger posed by defendant.
Haw.—State v. Kotis, 91 Haw. 319, 984 P.2d 78 (1999).
Mandatory treatment period
A statute requiring defendants found incompetent to stand trial to undergo a mandatory period of treatment to attempt to restore their competency violated due process rights of defendant who was found incompetent to stand trial; the mandatory treatment was not rationally related to the purpose for the treatment, and the statute failed to provide for discontinuing the treatment if the person supervising defendant's treatment reported that the treatment was not effective and that defendant would not attain competency to stand trial in the foreseeable future.
Ohio—State v. Sullivan, 90 Ohio St. 3d 502, 2001-Ohio-6, 739 N.E.2d 788 (2001).

3 U.S.—U.S. v. Bush, 585 F.3d 806 (4th Cir. 2009).

4 Or.—State v. Lopes, 355 Or. 72, 322 P.3d 512 (2014).

5 Or.—State v. Lopes, 355 Or. 72, 322 P.3d 512 (2014).

6 Or.—State v. Lopes, 355 Or. 72, 322 P.3d 512 (2014).

16C C.J.S. Constitutional Law § 1804

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PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

2. Incompetence to Stand Trial

§ 1804. Indefinite commitment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4337, 4784

An indefinite commitment of a criminal defendant solely on account of the defendant's incompetency to stand trial is violative of the Due Process Clause.

An indefinite commitment of a criminal defendant solely on account of the defendant's incompetency to stand trial is violative of the Due Process Clause.[1] Due process requires, at a minimum, that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.[2] Accordingly, in order to satisfy due process requirements, a person charged by a state with a criminal offense who is committed solely on account of an incapacity to proceed to trial cannot be held more than the reasonable time necessary to determine whether there is a substantial probability that the person will attain that capacity in the foreseeable future;[3] such determination must follow a hearing addressed to that specific issue.[4] Once it is determined that there is no substantial probability that the person will attain the capacity to proceed to trial in the foreseeable future, the State must either institute civil commitment proceedings[5] or release the defendant.[6] Furthermore, even if it is determined that the defendant probably will be able to stand trial soon, the defendant's continued commitment must be justified by progress toward that goal.[7]

Due process requires that one found incompetent to stand trial is entitled to release when observatory confinement reaches the length of the potential maximum sentence for the underlying criminal offense.[8] Continued confinement of such a person beyond the expiration of the maximum penalty period under the offense charged can occur only after the incompetent has been given the due process guaranties accorded one subject to civil commitment.[9]

Right to dismissal.

Though an incompetent defendant who is unlikely to achieve competency in the future may have a due process right not to be held in custody based solely on the fact that a grand jury has issued an indictment, such defendant does not have a corollary right to dismissal of the charges, given the public's countervailing interest in the court's continuing jurisdiction.[10]

Footnotes

1 U.S.—Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972).
La.—State v. Denson, 888 So. 2d 805 (La. 2004).
Miss.—Brown v. Jaquith, 318 So. 2d 856 (Miss. 1975).
Tex.—Ex parte Meade, 550 S.W.2d 679 (Tex. Crim. App. 1977).

2 U.S.—Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972).
Iowa—State v. Stark, 550 N.W.2d 467 (Iowa 1996).
Mont.—State v. Tison, 2003 MT 342, 318 Mont. 465, 81 P.3d 471 (2003).
N.Y.—People ex rel. Anonymous v. Waugh, 76 Misc. 2d 879, 351 N.Y.S.2d 594 (Sup 1974).
Reasonable
Nature and duration of confinement imposed on defendants incompetent to stand trial pursuant to statute does not deprive them of substantive due process; the statute requires more than mere incompetency for commitment to treatment, by requiring both incompetency to stand trial and dangerousness, the statute requires the court to periodically monitor whether a committee is making progress toward competency, and the duration of commitment is reasonable.
N.M.—State v. Rotherham, 1996-NMSC-048, 122 N.M. 246, 923 P.2d 1131 (1996).

3 U.S.—Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972); U.S. v. Magassouba, 544 F.3d 387 (2d Cir. 2008).
La.—State v. Denson, 888 So. 2d 805 (La. 2004).

4 Cal.—Conservatorship of Hofferber, 28 Cal. 3d 161, 167 Cal. Rptr. 854, 616 P.2d 836 (1980).
Fla.—Daniels v. O'Connor, 243 So. 2d 144 (Fla. 1971).

5 U.S.—De Angelas v. Plaut, 503 F. Supp. 775 (D. Conn. 1980).
La.—State v. Denson, 888 So. 2d 805 (La. 2004).
Minn.—State v. Bauer, 299 N.W.2d 493 (Minn. 1980).

6 U.S.—Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972).
La.—State v. Denson, 888 So. 2d 805 (La. 2004).
Immediate release not mandated
Haw.—State v. Raitz, 63 Haw. 64, 621 P.2d 352 (1980).

7 U.S.—De Angelas v. Plaut, 503 F. Supp. 775 (D. Conn. 1980).
Mass.—Abbott A. v. Commonwealth, 458 Mass. 24, 933 N.E.2d 936 (2010).

8 Wis.—State ex rel. Hager v. Marten, 226 Wis. 2d 687, 594 N.W.2d 791 (1999).

9 Wis.—State ex rel. Deisinger v. Treffert, 85 Wis. 2d 257, 270 N.W.2d 402 (1978).

10 N.Y.—People v. Lewis, 95 N.Y.2d 539, 720 N.Y.S.2d 87, 742 N.E.2d 601 (2000).

16C C.J.S. Constitutional Law § 1805

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PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

3. Persons Acquitted on Ground of Insanity

§ 1805. Persons acquitted on ground of insanity, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4337, 4781

Involuntary commitment procedures relating to a criminal defendant acquitted by reason of insanity must comply with due process.

Involuntary commitment procedures relating to a criminal defendant acquitted by reason of insanity must comply with due process.[1] Accordingly, in some jurisdictions, before a commitment, an insanity acquittee is entitled to a hearing[2] and the assistance of counsel.[3] Moreover, in order to justify the confinement of an individual following an insanity acquittal, due process requires a judicial determination that the individual is mentally ill and dangerous to him- or herself or to others.[4] Thus, a criminal acquittee may be held as long as he or she is both mentally ill and dangerous but no longer.[5]

A person acquitted on the ground of insanity may be committed based on the proof of insanity by a preponderance of the evidence.[6]

When a criminal defendant establishes by a preponderance of the evidence that the defendant is not guilty of a crime by reason of insanity, the Due Process Clause permits the government, on the basis of the insanity judgment, to confine the defendant to

a mental institution until such time as the defendant has regained sanity or is no longer a danger to him- or herself or to society, and the defendant can be confined to a mental hospital for a period longer than the defendant could have been incarcerated had the defendant been convicted.[7]

Automatic temporary commitment.

In some jurisdictions, a mandatory commitment of a defendant acquitted by reason of insanity, for a reasonable time for examination and observation, without a precommitment hearing, is not violative of due process[8] so long as the defendant is provided an opportunity for release within a reasonable time after commitment by demonstrating that the defendant is no longer suffering from a mental illness likely to cause the defendant to be dangerous in the reasonably foreseeable future.[9] Accordingly, the availability of a postcommitment release hearing, after the specified period under commitment, satisfies the due process demands.[10]

Suppression of evidence.

Where defendant's sanity is at issue, the denial of a reasonable request to obtain the services of a necessary psychiatric witness is effectually a suppression of evidence violating the fundamental right of due process.[11]

Footnotes

1 U.S.—Dorsey v. Solomon, 604 F.2d 271 (4th Cir. 1979).
Ind.—Wilson v. State, 259 Ind. 375, 287 N.E.2d 875 (1972).
Mo.—State v. Kee, 510 S.W.2d 477 (Mo. 1974).
Wis.—State ex rel. Schopf v. Schubert, 45 Wis. 2d 644, 173 N.W.2d 673, 50 A.L.R.3d 134 (1970).

2 U.S.—Stacy v. Love, 528 F. Supp. 38 (M.D. Tenn. 1981), aff'd, 679 F.2d 1209 (6th Cir. 1982).
Ark.—Schock v. Thomas, 274 Ark. 493, 625 S.W.2d 521 (1981).
Fla.—Fitzsimons v. State, 347 So. 2d 1090 (Fla. 2d DCA 1977).
Ga.—Skelton v. Slaton, 243 Ga. 426, 254 S.E.2d 704 (1979).

3 U.S.—Dorsey v. Solomon, 604 F.2d 271 (4th Cir. 1979).
Ark.—Schock v. Thomas, 274 Ark. 493, 625 S.W.2d 521 (1981).
Fla.—In re Connors, 332 So. 2d 336 (Fla. 1976).

4 U.S.—Powell v. State of Fla., 579 F.2d 324 (5th Cir. 1978).
N.J.—State v. Krol, 68 N.J. 236, 344 A.2d 289 (1975).
Wis.—State v. Gebarski, 90 Wis. 2d 754, 280 N.W.2d 672 (1979).
Statutory criteria
Statutory criteria for determining when an insanity acquittee suffers from mental illness, and thus may be subject to continued confinement, under which a showing is required that the acquittee suffers from illness requiring inpatient care and treatment, which are essential to his or her welfare, and that because of impaired judgment the acquittee does not understand the need for such treatment, satisfy the due process requirement that such commitment is permissible only upon a showing of dangerousness, and thus, the statute is constitutional on its face, even though the word "dangerous" does not appear therein.
N.Y.—In re David B., 97 N.Y.2d 267, 739 N.Y.S.2d 858, 766 N.E.2d 565 (2002).

5 Wyo.—Reiter v. State, 2001 WY 116, 36 P.3d 586 (Wyo. 2001).
A.L.R. Library
Extended Commitment of One Committed to Institution as Consequence of Acquittal of Crime on Ground of Insanity, 52 A.L.R.6th 567.

6 U.S.—Harris v. Ballone, 681 F.2d 225, 34 Fed. R. Serv. 2d 204 (4th Cir. 1982).
Haw.—Thompson v. Yuen, 63 Haw. 186, 623 P.2d 881 (1981).

7 U.S.—Jones v. U.S., 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Indefinite commitment

An indefinite term of commitment of an insanity acquittee is not violative of due process if there is a dual standard for release; that is, if the acquittee must be released when he or she is either no longer mentally ill or no longer dangerous.

Wis.—State v. Randall, 192 Wis. 2d 800, 532 N.W.2d 94 (1995).

8 Cal.—People v. De Anda, 114 Cal. App. 3d 480, 170 Cal. Rptr. 830 (2d Dist. 1980).

Colo.—People v. Fetty, 650 P.2d 541 (Colo. 1982).

Kan.—State v. Van Hoet, 277 Kan. 815, 89 P.3d 606 (2004).

9 Colo.—People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Del.—Matter of Lewis, 403 A.2d 1115 (Del. 1979).

Iowa—State v. Allan, 166 N.W.2d 752 (Iowa 1969).

10 Cal.—In re Lee, 78 Cal. App. 3d 753, 144 Cal. Rptr. 528 (3d Dist. 1978).

11 U.S.—U. S. ex rel. Robinson v. Pate, 345 F.2d 691 (7th Cir. 1965).

As to suppression of evidence, generally, see § 1690.

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16C C.J.S. Constitutional Law § 1806

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PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

3. Persons Acquitted on Ground of Insanity

§ 1806. Release procedures relating to persons acquitted on ground of insanity

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4337, 4781

Release procedures relating to persons acquitted by reason of insanity should comply with due process requirements.

Release procedures with respect to insanity acquittees should comply with due process requirements.[1] Under such requirements, where defendant is committed for the protection of society or the defendant from harm the defendant may inflict, the deprivation of that person's liberty can constitutionally continue only so long as the potential for that harm remains sufficiently great so that the defendant's confinement would be warranted were the initial committability at issue.[2] Thus, as a matter of due process, an insanity acquittee is entitled to release when the acquittee is again sane or is no longer considered dangerous.[3]

A statute allowing the continued confinement of an insanity acquittee on the basis of the acquittee's antisocial personality, after a hospital review committee had reported no evidence of mental illness and recommended conditional discharge, violated due process.[4]

The M'Naghten test of knowing right from wrong is not the test to be applied in determining whether accused committed after having been found not guilty by reason of insanity should be released from a state hospital, and failure to apply such test does not

amount to a denial of due process.[5] Under a particular statute, the standard for determining eligibility of defendant for release from commitment, or for conditional release, i.e., that defendant has no abnormal mental condition which would be likely to cause the defendant to be dangerous in the reasonably foreseeable future, does not violate due process of law.[6]

Under some statutes, it has been held that where the State has committed an insanity acquittee on a minimum procedural safeguards, it cannot subsequently shift the burden of proof to the acquittee to obtain a release and that such shifting of the burden of proof violates the Due Process Clause.[7] Under other statutes, it has been held that requiring a person who has been lawfully committed, and who subsequently seeks a release on the ground that the reasons for such commitment no longer exist, to bear the burden of proving a change in the person's condition does not deprive the person of due process.[8] However, the burden imposed on defendant to prove sanity beyond a reasonable doubt does violate due process.[9]

Placing the burden of proof on defendant to prove the defendant's eligiblity for release, when the chief officer of the institution determines defendant is not presently eligible, does not violate due process of law.[10] However, a statute under which an insanity acquittee was denied release was unconstitutional on due process grounds where it required the acquittee to prove, even if the acquittee was not insane, that the acquittee was not dangerous.[11] In contesting the recommendation of the custodial institution, defendant who seeks the release from the commitment bears the burden of proving by a preponderance of the evidence that the defendant is not likely to be dangerous; due process does not require that the burden of proof must always be placed on the proponent of the continued institutionalization.[12]

A person committed to a hospital after being found not guilty by reason of insanity, who is subsequently found sane, is entitled to an unconditional release, and any statutory provision to the contrary deprives that person of rights to due process.[13] Where there is a compliance with the procedures set forth in the statute, a denial of release from the commitment does not violate defendant's due process.[14]

The extension of conditions imposed upon the release of an insanity acquittee for an additional term of years do not violate the defendant's due process rights even if the period of the conditional release is longer than the period for which the defendant might have been incarcerated if convicted.[15]

Recommitment.

The procedural due process principles dictate that a mental patient acquitted by reason of insanity must be afforded notice and a hearing prior to the revocation of the patient's outpatient status and recommitment to the mental institution.[16] An application of statutory procedures for recommitment of persons who had been found not guilty by reason of mental disease or defect implicated the liberty interests of acquittee as an element analysis for procedural due process violation.[17]

CUMULATIVE SUPPLEMENT

Cases:

Evidence viewed in the light most favorable to acquitted committee did not show that actions of current and former Missouri Department of Mental Health employees shocked the conscience, and thus employees were entitled to qualified immunity in § 1983 action alleging that acquittee had been deprived of his substantive due process right to liberty; there was no evidence that any medical opinion as to committed acquittee's eligibility for conditional release was offered in bad faith, or that any of the employees' representations to the circuit court in proceedings on motions for conditional release were inspired by malice or otherwise untruthful. U.S. Const. Amends. 5, 14; 42 U.S.C.A. § 1983. Andrews v. Schafer, 888 F.3d 981 (8th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Harris v. Ballone, 681 F.2d 225, 34 Fed. R. Serv. 2d 204 (4th Cir. 1982).
Del.—Matter of Lewis, 403 A.2d 1115 (Del. 1979).

2 N.J.—State v. Fields, 77 N.J. 282, 390 A.2d 574 (1978).

3 Haw.—State v. Miller, 84 Haw. 269, 933 P.2d 606 (1997).
Unchanged mental condition
Due process did not require the release of an insanity acquittee from confinement in a medical facility, regardless of whether his present condition would support a civil commitment, where the insanity acquittee continued to be dangerous person, and his mental condition remained unchanged from the time of acquittal.
Idaho—Application of Nielsen, 127 Idaho 449, 902 P.2d 474 (1995).

4 U.S.—Foucha v. Louisiana, 504 U.S. 71, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992).

5 Cal.—People v. Mallory, 254 Cal. App. 2d 151, 61 Cal. Rptr. 825 (2d Dist. 1967).
Colo.—People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

6 **Probability**
The fact that a determination of dangerousness involves a prediction of the future conduct of a committed person, rather than a mere characterization of past conduct, does not violate due process; the required finding is the likelihood of dangerous conduct in terms of probability, not mere possibility.
Colo.—People v. Howell, 196 Colo. 408, 586 P.2d 27 (1978).

7 U.S.—Locklear v. Hultine, 528 F. Supp. 982 (D. Kan. 1981).

8 Me.—Green v. Commissioner of Mental Health and Mental Retardation, 2000 ME 92, 750 A.2d 1265 (Me. 2000).
N.Y.—Lublin v. Central Islip Psychiatric Center, 43 N.Y.2d 341, 401 N.Y.S.2d 466, 372 N.E.2d 307 (1977).
Burden of proof on rebuttal
Requiring a criminal acquittee to rebut the inference or presumption of continuing mental illness and dangerousness by a preponderance of the evidence at a discharge proceeding does not violate state or federal due process guarantees.
Wy.—Reiter v. State, 2001 WY 116, 36 P.3d 586 (Wyo. 2001).

9 U.S.—Allen v. Radack, 426 F. Supp. 1052 (D.S.D. 1977).

10 Colo.—People v. Chavez, 629 P.2d 1040 (Colo. 1981).

11 Va.—Williams v. Com., 18 Va. App. 384, 444 S.E.2d 16 (1994).

12 Colo.—People v. Howell, 196 Colo. 408, 586 P.2d 27 (1978).

13 Ohio—Holderbaum v. Watkins, 44 Ohio App. 2d 253, 73 Ohio Op. 2d 256, 337 N.E.2d 800 (3d Dist. Allen County 1974), judgment aff'd, 42 Ohio St. 2d 372, 71 Ohio Op. 2d 333, 328 N.E.2d 814 (1975).

14 Cal.—People v. Mallory, 254 Cal. App. 2d 151, 61 Cal. Rptr. 825 (2d Dist. 1967).
Mo.—State v. Johnson, 634 S.W.2d 231 (Mo. Ct. App. E.D. 1982).

15 N.Y.—Matter of Oswald N., 87 N.Y.2d 98, 637 N.Y.S.2d 949, 661 N.E.2d 679 (1995).

16 Cal.—In re Anderson, 73 Cal. App. 3d 38, 140 Cal. Rptr. 546 (2d Dist. 1977).
Initial hearing
The fact that an insanity acquittee was found at an initial hearing not to have a dangerous mental disorder did not entitle him, as a matter of due process and equal protection, to the same procedural safeguards during the recommitment proceeding, based on the ground that he currently suffered from a dangerous mental disorder, that was accorded other persons solely committed through civil procedures.
N.Y.—Matter of Francis S., 87 N.Y.2d 554, 640 N.Y.S.2d 840, 663 N.E.2d 881 (1995).

17 Conn.—State v. Long, 268 Conn. 508, 847 A.2d 862 (2004).

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16C C.J.S. Constitutional Law § 1807

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PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

4. Special Categories of Defendants

§ 1807. Commitment of addicts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4345, 4823

Due process requires that before a person is committed as a narcotics addict, the person be found to be a narcotics addict or a person in imminent danger of becoming addicted by proof beyond a reasonable doubt.

Under a statute providing that, upon conviction of defendant for any crime, and upon imposition of sentence, if it appears to the judge that defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics the judge shall suspend the execution of the sentence and order the district attorney to file a petition for commitment of defendant to the director of corrections for confinement in the narcotic detention, treatment, and rehabilitation facility, a person proceeded against is afforded the due process protections accorded to a criminal defendant.[1]

Due process requires that before a person is committed as a narcotics addict, the person be found to be a narcotics addict or a person in imminent danger of becoming addicted by proof beyond a reasonable doubt[2] and by a unanimous verdict of a jury.[3]

It has been held both that a defendant does,[4] and does not,[5] have a constitutionally protected interest in the opportunity for narcotics addiction treatment.

Where a narcotics addict is committed as a result of criminal sentencing and the addict's status as an outpatient is revoked, due process requires that a revocation hearing be held as soon as possible after the addict's prompt return to the rehabilitation center.[6] With regard to the revocation of the outpatient status by the narcotic addict evaluation authority, the outpatient is entitled under due process to written notice of the claimed violations of release, to disclosure of the evidence against the outpatient, to be heard in person and to present witnesses and documentary evidence, to confront adverse witnesses unless the hearing officer specifically finds good cause not to allow it, to have a hearing conducted before a neutral body, to a written statement of evidence relied on and reasons for revoking outpatient status, and to be represented by counsel, if necessary.[7]

Punishment of a narcotics addict who has been civilly committed for treatment constitutes a violation of due process.[8] The Due Process Clause is not violated by a statute which permits the trial judge to exercise discretion, albeit without specific standards to guide the judge, to provide a rehabilitative medical treatment to felons the judge finds likely to benefit from such type of sentence and not to others.[9]

A person who is convicted is not denied due process because of the person's exclusion, under a federal narcotics statute, from consideration for a treatment as a narcotics addict because of a specified number of prior felony convictions.[10]

Footnotes

1 Cal.—Hendricks v. Superior Court, 81 Cal. App. 3d 950, 146 Cal. Rptr. 798 (2d Dist. 1978).
2 Cal.—Hendricks v. Superior Court, 81 Cal. App. 3d 950, 146 Cal. Rptr. 798 (2d Dist. 1978).
3 Cal.—People v. Thomas, 19 Cal. 3d 630, 139 Cal. Rptr. 594, 566 P.2d 228 (1977).
4 Cal.—People v. Davis, 160 Cal. App. 3d 970, 207 Cal. Rptr. 18 (5th Dist. 1984).
5 Cal.—Salcido v. Superior Court, 112 Cal. App. 3d 994, 169 Cal. Rptr. 597 (2d Dist. 1980).
6 Cal.—In re Bye, 12 Cal. 3d 96, 115 Cal. Rptr. 382, 524 P.2d 854 (1974).
7 Cal.—In re Bye, 12 Cal. 3d 96, 115 Cal. Rptr. 382, 524 P.2d 854 (1974).
8 Cal.—People v. Myers, 6 Cal. 3d 811, 100 Cal. Rptr. 612, 494 P.2d 684 (1972).
9 U.S.—Smith v. Follette, 445 F.2d 955 (2d Cir. 1971).
10 U.S.—Marshall v. U.S., 414 U.S. 417, 94 S. Ct. 700, 38 L. Ed. 2d 618 (1974).

16C C.J.S. Constitutional Law § 1808

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PART VII. Constitutional Rights Applicable to Criminal Proceedings and Prosecutions

XVIII. Constitutional Rights within the Criminal Process; Searches and Arrest to Sentencing and Confinement

K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

4. Special Categories of Defendants

§ 1808. Commitment of defective delinquents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4337, 4340, 4341

Legislation providing for restraint of defective delinquents found to be dangerous to the health and safety of the community does not violate the due process clause.

Legislation providing for restraint of defective delinquents found to be dangerous to the health and safety of the community does not violate the due process clause.[1] Defective delinquency proceedings, which are ordinarily instituted immediately after conviction and sentencing, are subject to due process[2] although it is not required that they be surrounded with all the due process safeguards identified with a criminal proceeding.[3] Statutes which provide for the commitment of mentally defective persons who are dangerous or may become so, and which provide for notice and opportunity to be heard, satisfy the essential elements of due process.[4]

The use of the preponderance-of-the-evidence test rather than beyond-a-reasonable-doubt or clear-and-convincing evidence test in defective delinquency hearings after the guilt stage of criminal trials does not deny due process.[5]

Delays between the time defendant arrives at the facility for examination as a possible defective delinquent and the time the defendant is evaluated to be a defective delinquent, and between the time defendant is so evaluated and the time of the defective delinquency hearing, do not necessarily deny defendant due process.[6] Due process does not require that the state institution provide to persons being examined for a prehearing report as to possible defective delinquency the right to counsel, the right to remain silent, or the right to assert the privilege against self-incrimination.[7]

Due process limits the permissible length of a commitment for observation of a defective delinquent,[8] and it is a denial of due process to continue to hold defendant on the basis of an ex parte order committing the defendant for observation without the procedural safeguards commensurate with a long-term commitment.[9] However, the fact that defendant is held in an institution for some time without a judicial determination of defective delinquency, as a result of the defendant's refusal to submit to the examination, does not result in a denial of due process where the underlying criminal sentence has not expired.[10] Also, a prisoner is not denied due process because the prisoner is held at the institution past the expiration of a sentence received on the conviction of a crime where the prisoner is confined because, prior to the expiration of the sentence, the prisoner refused to obey a court order to cooperate with the authorities at the institution in an examination for possible defective delinquency and was held in contempt of court.[11]

Sex offenders.

Legislative enactment of a general rule governing an entire class of persons adjudicated delinquent or convicted of the offense of rape of a child did not afford all process due as required to obviate the need for an individualized hearing as a condition of registration under the state sex offender registration and community notification act.[12]

No federally protected liberty interest is implicated where pursuant to a community notification provision, the government disseminates information about a convicted sex offender that has the effect of tarnishing that individual's reputation.[13]

Footnotes

1 Md.—Fox v. Director, Patuxent Institution, 6 Md. App. 475, 251 A.2d 632 (1969).
"Defective delinquent"
The definition of "defective delinquent" as an individual who, by demonstration of persistent aggravated antisocial or criminal behavior, evidences a propensity toward criminal activity, and who is found to have either such intellectual deficiency or emotional unbalance, or both, as to clearly demonstrate actual danger to society so as to require such confinement and treatment, when appropriate, as may make it reasonably safe for society to terminate confinement and treatment is not so vague as to offend due process.
U.S.—Tippett v. State of Md., 436 F.2d 1153 (4th Cir. 1971).
Md.—Director of Patuxent Institution v. Daniels, 243 Md. 16, 221 A.2d 397 (1966).

2 U.S.—Tippett v. State of Md., 436 F.2d 1153 (4th Cir. 1971).
Md.—Martin v. Director, Patuxent Inst., 18 Md. App. 505, 308 A.2d 212 (1973).

3 Md.—McDonough v. State, 253 Md. 547, 253 A.2d 517 (1969).

4 Mass.—In re Chouinard, 358 Mass. 780, 267 N.E.2d 497 (1971).
Vt.—State v. Labor, 128 Vt. 597, 270 A.2d 154 (1970).

5 U.S.—Dower v. Boslow, 539 F.2d 969 (4th Cir. 1976).
Md.—Bush v. Director, Patuxent Inst., 22 Md. App. 353, 324 A.2d 162 (1974).

6 Md.—Smith v. Director, Patuxent Inst., 27 Md. App. 618, 342 A.2d 334 (1975).

7 U.S.—Dower v. Boslow, 539 F.2d 969 (4th Cir. 1976).

8 U.S.—McNeil v. Director, Patuxent Institution, 407 U.S. 245, 92 S. Ct. 2083, 32 L. Ed. 2d 719 (1972).

9 U.S.—McNeil v. Director, Patuxent Institution, 407 U.S. 245, 92 S. Ct. 2083, 32 L. Ed. 2d 719 (1972).

10 Md.—Savage v. State, 19 Md. App. 1, 308 A.2d 701 (1973).

11 Md.—Williams v. Director, Patuxent Inst., 276 Md. 272, 347 A.2d 179 (1975).

12 Mass.—Doe v. Attorney General, 430 Mass. 155, 715 N.E.2d 37 (1999).

Reputation

Even if a juvenile's reputation were a protected liberty interest, there was no undue harm to his reputation in requiring him to register as a sex offender after having been adjudicated a delinquent for committing first degree criminal sexual conduct with a minor (CSCM) since the registry information would not be made available to the public because of the juvenile's age at the time of the adjudication.

S.C.—In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003).

13 Del.—Helman v. State, 784 A.2d 1058 (Del. 2001).

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16C C.J.S. Constitutional Law § 1809

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K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

4. Special Categories of Defendants

§ 1809. Commitment of psychopathic or mentally disordered sex offenders or sexually dangerous persons

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4342, 4344

Whether denominated civil or criminal, proceedings relating to commitment of sexual psychopaths, mentally disordered sex offenders, or sexually dangerous persons are subject to the protection of the due process clause.

The commitment of an incompetent person as a sexually dangerous person does not violate due process.[1] Nevertheless, whether denominated civil or criminal, proceedings relating to commitment of sexual psychopaths, mentally disordered sex offenders, or sexually dangerous persons are subject to the protection of the Due Process Clause.[2] Although it has been stated that due process of law does not require that all the safeguards and procedural requirements of a criminal prosecution be followed during such proceedings,[3] there is authority holding that such proceedings are essentially criminal and are subject to the full panoply of the due process protection as in criminal cases.[4]

Due process requires that a sex offender be present with counsel,[5] have an opportunity to be heard,[6] be confronted with witnesses against the sex offender, and have the right to cross-examine and to offer evidence.[7] Victim hearsay statements must contain

special indicia of reliability to satisfy due process in a sexually violent predator (SVP) commitment proceeding.[8] Due process does not require that a convicted sex offender receive the full panoply of commitment procedures afforded to civilly committed persons if the commitment is a sentencing alternative and commitment on that basis is limited to the length of a criminal sentence for the conviction.[9]

While some cases hold that due process does not require that defendant be given a jury trial,[10] there is authority holding that due process requires that a mentally disordered sex offender be informed of the right to demand a jury trial;[11] due process is satisfied where defendant is afforded a trial by jury.[12] Jury unanimity is not required on the issue of whether a petitioner was a sexually dangerous person following the discharge hearing on a petition by the person committed to a treatment center at a correctional institution.[13]

In order to find a person a mentally disordered sex offender or sexually dangerous, the proper standard of proof is proof beyond a reasonable doubt, not proof by a preponderance of the evidence, and any lesser standard of proof falls short of providing the required level of due process.[14] However, other authorities have held that due process does not require proof beyond a reasonable doubt but proof by clear, unequivocal, and convincing evidence.[15]

Under some statutes, where a person has been convicted of the crime of sexual perversion, due process does not require a hearing for a commitment to a sex deviate center for a presentence social, physical, and mental examination.[16] However, where defendant is the subject of a presentence report recommending specialized treatment, the defendant is entitled under the due process clause to a full-fledged hearing on such report and to a finding by the trial court, based on the evidence submitted, whether the defendant needs psychiatric and medical treatment as a sex deviate.[17]

A determination by the health authorities that the criminal act of defendant, who is recommended for a specialized treatment following an offense, is not the result of sexual deviant behavior which requires specialized treatment does not deprive defendant of liberty or property without due process of law.[18] Certain minimum due process requirements for a reexamination of a sex crimes commitment between the time of initial commitment and the expiration of the maximum time must be included.[19]

The State may not constitutionally continue an involuntary commitment of a sex crime offender without due process of law.[20] The due process clause requires that an individual be released from confinement on a finding that the individual is no longer sexually dangerous[21] or where the individual is not afforded a recommital hearing within a specified period of time.[22]

Various statutes relating to the commitment of sexual psychopaths, mentally disordered sex offenders, or sexually dangerous persons have been held not to violate due process[23] while some other statutes have been held deficient in due process.[24]

Termination of treatment.

In accordance with due process, before a person can be terminated from the mentally disordered sex offender program, the person must be informed of the grounds for the person's proposed exclusion, be given notice of the right to respond and the opportunity to do so, and be given access to the information relied on by those who propose to terminate treatment.[25]

Appeal.

A denial of the right of appeal from the original charge caused by an indefinite delay of the sentence of defendant, who is found to be a sexual sociopath, offends the basic notions of due process.[26]

CUMULATIVE SUPPLEMENT

Cases:

Sex offender's procedural due process rights were not violated, in proceeding for discharge from civil commitment, by admission of opinions of mental health experts, which were based, in whole or in part on state hospital's behavioral write-ups; committee was afforded a full hearing and had opportunity to cross-examine on the petition, the write-ups, and the other bases relied on for committee's continued commitment. U.S. Const. Amend. 14; NDCC §§ 25-03.3-17, 25-03.3-18; N.D. R. Evid. 703. Matter of Hehn, 2021 ND 20, 954 N.W.2d 689 (N.D. 2021).

[END OF SUPPLEMENT]

Footnotes

1 Mass.—Com. v. Nieves, 446 Mass. 583, 846 N.E.2d 379 (2006).

2 U.S.—Specht v. Patterson, 386 U.S. 605, 87 S. Ct. 1209, 18 L. Ed. 2d 326 (1967).
Cal.—People v. Hill, 219 Cal. App. 4th 646, 162 Cal. Rptr. 3d 3 (4th Dist. 2013).
N.Y.—State v. John S., 23 N.Y.3d 326, 991 N.Y.S.2d 532, 15 N.E.3d 287 (2014).
"Badge of infamy"
The label of "violent sexual predator" is a "badge of infamy" attached by the State that necessitates due process protections.
Idaho—Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009).

3 U.S.—Gomes v. Gaughan, 471 F.2d 794 (1st Cir. 1973).
Ill.—People v. Pettit, 97 Ill. App. 3d 692, 53 Ill. Dec. 129, 423 N.E.2d 513 (2d Dist. 1981).
Mass.—Com. v. Lamb, 365 Mass. 265, 311 N.E.2d 47 (1974).

4 Cal.—Hoffman v. Superior Court, 122 Cal. App. 3d 715, 177 Cal. Rptr. 868 (4th Dist. 1981).

5 U.S.—Specht v. Patterson, 386 U.S. 605, 87 S. Ct. 1209, 18 L. Ed. 2d 326 (1967).
Ill.—People v. Potts, 17 Ill. App. 3d 867, 309 N.E.2d 35 (5th Dist. 1974).
Mass.—Petition of Peterson, 354 Mass. 110, 236 N.E.2d 82 (1968).
Effective competent counsel
It is a due process violation to have ineffective assistance of counsel in sexually violent predator determinations.
Kan.—In re Ontiberos, 45 Kan. App. 2d 235, 247 P.3d 686 (2011), judgment aff'd, 295 Kan. 10, 287 P.3d 855 (2012).

6 U.S.—Specht v. Patterson, 386 U.S. 605, 87 S. Ct. 1209, 18 L. Ed. 2d 326 (1967).
Cal.—People v. Slutts, 259 Cal. App. 2d 886, 66 Cal. Rptr. 862 (2d Dist. 1968).
Ill.—People v. Abney, 90 Ill. App. 2d 235, 232 N.E.2d 784 (5th Dist. 1967).
Mass.—Petition of Peterson, 354 Mass. 110, 236 N.E.2d 82 (1968).
Revocation of conditional discharge
To comply with the requirements of due process, prior to a hearing to determine whether a person's conditional discharge should be revoked under a sexually violent predators statute, the person must be given written notice of each alleged violation sufficiently in advance of the court proceeding to provide a reasonable opportunity to prepare a defense; in essence, due process requires that notice be given of each alleged violation so the person may attempt to explain or refute the charges.
N.J.—In re Commitment of E.D., 183 N.J. 536, 874 A.2d 1075 (2005).

7 U.S.—U. S. ex rel. Stachulak v. Coughlin, 520 F.2d 931 (7th Cir. 1975).
Cal.—People v. Austin, 260 Cal. App. 2d 658, 67 Cal. Rptr. 391 (2d Dist. 1968).
Ind.—Hightower v. State, 168 Ind. App. 194, 343 N.E.2d 300 (1976).

Mass.—Petition of Peterson, 354 Mass. 110, 236 N.E.2d 82 (1968).

8 Ca.—People v. Otto, 26 Cal. 4th 200, 109 Cal. Rptr. 2d 327, 26 P.3d 1061 (2001).

Neb.—In re Interest of A.M., Jr., 281 Neb. 482, 797 N.W.2d 233 (2011).

9 Minn.—Fritz v. State, 284 N.W.2d 377 (Minn. 1979).

10 U.S.—Hollis v. Smith, 571 F.2d 685 (2d Cir. 1978).

11 Cal.—People v. Colvin, 114 Cal. App. 3d 614, 171 Cal. Rptr. 32 (5th Dist. 1981).

12 U.S.—Irwin v. Wolff, 529 F.2d 1119 (8th Cir. 1976).

Ill.—People v. Studdard, 51 Ill. 2d 190, 281 N.E.2d 678 (1972).

13 Mass.—In re Sheridan, 422 Mass. 776, 665 N.E.2d 978 (1996).

14 U.S.—Irwin v. Wolff, 529 F.2d 1119 (8th Cir. 1976).

Cal.—People v. Bonneville, 14 Cal. 3d 384, 121 Cal. Rptr. 540, 535 P.2d 404 (1975).

Ill.—People v. Pettit, 97 Ill. App. 3d 692, 53 Ill. Dec. 129, 423 N.E.2d 513 (2d Dist. 1981).

15 U.S.—Hollis v. Smith, 571 F.2d 685 (2d Cir. 1978).

Fla.—Westerheide v. State, 831 So. 2d 93 (Fla. 2002).

Va.—Com. v. Allen, 269 Va. 262, 609 S.E.2d 4 (2005).

16 Mass.—Com. v. Knapp, 441 Mass. 157, 804 N.E.2d 885 (2004).

Wis.—Cross v. State, 45 Wis. 2d 593, 173 N.W.2d 589 (1970).

Criminal conviction

Defendant who was convicted of luring a minor by computer was subject to mandatory registration as a sexual offender, and his criminal conviction effectively provided him with procedural due process.

N.D.—State v. Backlund, 2003 ND 184, 672 N.W.2d 431 (N.D. 2003).

17 Wis.—Whitty v. State, 34 Wis. 2d 278, 149 N.W.2d 557 (1967).

18 Wis.—Schmidt v. State, 68 Wis. 2d 512, 228 N.W.2d 751 (1975).

19 Wis.—State v. Cramer, 91 Wis. 2d 553, 283 N.W.2d 625 (Ct. App. 1979), decision aff'd, 98 Wis. 2d 416, 296 N.W.2d 921 (1980).

Requirements enumerated

Wis.—State ex rel. Terry v. Percy, 95 Wis. 2d 476, 290 N.W.2d 713 (1980).

20 Wis.—State v. Hanson, 98 Wis. 2d 80, 295 N.W.2d 209 (Ct. App. 1980), decision aff'd, 100 Wis. 2d 549, 302 N.W.2d 452 (1981).

21 Wash.—State v. McCuistion, 174 Wash. 2d 369, 275 P.3d 1092, 78 A.L.R.6th 747 (2012), cert. denied, 133 S. Ct. 1460, 185 L. Ed. 2d 368 (2013).

22 N.H.—Hudson v. Miller, 119 N.H. 141, 399 A.2d 612 (1979).

23 U.S.—Artway v. Pallone, 672 F.2d 1168 (3d Cir. 1982).

Cal.—People v. Colvin, 114 Cal. App. 3d 614, 171 Cal. Rptr. 32 (5th Dist. 1981).

Kan.—State v. English, 198 Kan. 196, 424 P.2d 601 (1967).

Mo.—State v. Crabtree, 458 S.W.2d 292 (Mo. 1970).

N.J.—State v. Blanford, 105 N.J. Super. 56, 251 A.2d 138 (App. Div. 1969).

Wis.—Milewski v. State, 74 Wis. 2d 681, 248 N.W.2d 70 (1976).

Sex Offender Registration Act

Sex Offender Registration Act (SORA) established a civil, regulatory scheme that was not punitive and, thus, did not inflict punishment on persons who committed sex offenses before it was enacted or who were acquitted of sex offenses by reason of insanity in violation of the ex post facto, double jeopardy, or due process clauses.

D.C.—In re W.M., 851 A.2d 431 (D.C. 2004).

24 **Deprivation of specific rights**

A statute allowing for the sentence of certain sex offenders to an indeterminate term of one day to life was deficient in due process in not allowing a convicted sex offender at the time of sentencing all the offender's constitutional rights: to be present with counsel, to have an opportunity to be heard, to be confronted with witnesses against the offender, to have right to cross-examine, and to offer evidence.

Pa.—Com. v. Dooley, 209 Pa. Super. 519, 232 A.2d 45 (1967).

Sex offender required to leave rest home

A statute making it a crime for a level three sex offender to move into a long-term care facility such as a rest home violated due process and was unconstitutional as applied to a level three sex offender who had an

existing placement in a rest home at the time of enactment; the statute infringed on the offender's protected liberty and property interests by failing to provide for an individualized determination that the public safety benefits of requiring him to leave the rest home outweighed the risks to the offender of such a removal.

Mass.—Doe v. Police Com'r of Boston, 460 Mass. 342, 951 N.E.2d 337 (2011).

25 Cal.—People v. Reyes, 107 Cal. App. 3d 976, 166 Cal. Rptr. 127 (1st Dist. 1980).

No longer amenable to treatment

Defendant's due process rights were not violated by prosecution on a rape charge where prior to completion of a sexual psychopathy program, which was a condition of the prosecuting attorney's agreement not to prosecute on such charge, defendant was referred back to court as no longer amenable to treatment in such program.

Wash.—State v. Gilchrest, 25 Wash. App. 427, 607 P.2d 1243 (Div. 1 1980).

26 Neb.—State v. Shaw, 202 Neb. 766, 277 N.W.2d 106 (1979).

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K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

4. Special Categories of Defendants

§ 1810. Commitment of psychopathic or mentally disordered sex offenders or sexually dangerous persons—Conditions of confinement

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4344

Civilly committed sexually dangerous persons are entitled to conditions of confinement that comport with minimum Fourteenth Amendment due process standards.

Civilly committed sexually dangerous persons are entitled to conditions of confinement that comport with minimum Fourteenth Amendment due process standards.[1] Even if no single condition runs afoul of constitutional protections, a combination of conditions may violate a resident's due process rights.[2] However, disagreeable conditions can be consistent with the demands of due process so long as they do not amount to punishment.[3]

CUMULATIVE SUPPLEMENT

Cases:

Bureau of Prisons' (BOP) policy of reviewing all incoming and outgoing non-legal mail for civil detainee, who was civilly committed as sexually dangerous person, did not violate detainee's First Amendment rights, since there was a rational connection between BOP's mail policy and legitimate nonpunitive governmental interests to protect public and rehabilitate detainees and there was multi-level review process for mail that was flagged as problematic. U.S. Const. Amend. 1; 18 U.S.C.A. § 4248. Matherly v. Andrews, 859 F.3d 264 (4th Cir. 2017).

Detainee civilly committed as a sexually violent person stated claim against the laundry room supervisor of his facility for violation of both his due process rights under the Fourteenth Amendment and the Amendment's Equal Protection Clause by alleging that supervisor made threats of grave violence against him based on detainee's homosexuality. U.S.C.A. Const.Amend. 14;S.H.A. 725 ILCS 207/1. Hughes v. Farris, 809 F.3d 330 (7th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Healey v. Spencer, 765 F.3d 65, 89 Fed. R. Serv. 3d 659 (1st Cir. 2014).

2 U.S.—Healey v. Spencer, 765 F.3d 65, 89 Fed. R. Serv. 3d 659 (1st Cir. 2014).

3 U.S.—Healey v. Spencer, 765 F.3d 65, 89 Fed. R. Serv. 3d 659 (1st Cir. 2014).

Full-restraints policy for transporting patients

A sex offender program policy of placing full restraints on civilly committed patients any time they traveled outside of the secure perimeter of the program's facility was not unreasonable so as to violate the Due Process Clause; the program's articulated reasons for using full restraints were for the safety of the public and staff and to prevent escapes and attempted escapes, which had occurred at the program's facilities, and there was no showing that the program's transportation policy represented a substantial departure from accepted professional judgment, practice, or standards.

U.S.—Beaulieu v. Ludeman, 690 F.3d 1017 (8th Cir. 2012).

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K. Confinement, Examination, and Commitment of Mentally Disordered or Addicted Defendants

5. Transfer from Prison to Mental Hospital

§ 1811. Transfer from prison to mental hospital, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 4781, 4828

The involuntary transfer of a state prisoner to a mental hospital implicates a liberty interest that is protected by the due process clause.

The due process clause, in and of itself, does not protect a duly convicted prisoner against transfer from one institution to another.[1] However, the involuntary transfer of a state prisoner to a mental hospital implicates a liberty interest that is protected by the Due Process Clause.[2] Placement in a mental institution constitutes a serious deprivation of liberty, and such deprivation is substantial even for a person already confined in a penal institution.[3] The medical nature of the inquiry as to whether or not to transfer a prisoner to a mental hospital does not justify dispensing with due process requirements.[4]

So, a state prisoner has a liberty interest, rooted in a state statute which allows a specified official to transfer a prisoner to a mental hospital if a designated physician or psychologist finds the prisoner to be suffering from a mental disease or defect that cannot be given proper treatment in prison, under which the prisoner can reasonably expect not to be transferred to a mental hospital without a finding that the prisoner is suffering from a mental illness for which the prisoner cannot secure adequate

treatment in the correctional facility.[5] Furthermore, the State's reliance on the opinion of the physician or psychologist neither removes the prisoner's interest from due process protection nor answers the question of what process is due.[6]

Due process requires that a transfer of a prisoner to a mental hospital be accompanied by adequate notice, an adversary hearing before an independent decision maker, a written statement by the fact finder of the evidence relied on and the reasons for the decision, and the availability of appointed counsel for indigent prisoners.[7] Thus, the transfer without a commitment hearing violates the prisoner's right to due process.[8]

However, where immediate action is necessary for the protection of others, be they fellow inmates or correction officers, or for the welfare of the mentally ill inmate, due process does not require notice or hearing as a condition precedent to a valid temporary transfer of the inmate to a psychiatric hospital.[9] Moreover, the hearing may be delayed where there is a compelling state interest to warrant the postponement.[10]

Temporary transfers.

Temporary transfers of prisoners to mental health facilities for evaluation do not give rise to a liberty interest protected by the Due Process Clause.[11] In this regard, a temporary transfer to a mental health facility for evaluation does not burden an inmate's liberty interest any more than a prison transfer for administrative purposes.[12]

Returning mental patients from hospital to prison.

A prison inmate, adjudged in need of institutional care for mental illness, may be returned from the hospital to the prison in accordance with due process of law.[13]

Footnotes

1 § 1766.

2 U.S.—Vitek v. Jones, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980).
S.C.—Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980).

3 U.S.—Evans v. Paderick, 443 F. Supp. 583 (E.D. Va. 1977).

4 U.S.—Vitek v. Jones, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980).

5 U.S.—Vitek v. Jones, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980).

6 U.S.—Vitek v. Jones, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980).

7 U.S.—Vitek v. Jones, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980).

8 U.S.—Liles v. Ward, 424 F. Supp. 675 (S.D. N.Y. 1976).

9 N.Y.—State ex rel. Overton v. Director, Central New York Psychiatric Center, 99 Misc. 2d 1116, 418 N.Y.S.2d 254 (Sup 1979).

10 U.S.—Mignone v. Vincent, 411 F. Supp. 1386 (S.D. N.Y. 1976).

11 U.S.—Green v. Dormire, 691 F.3d 917 (8th Cir. 2012).

12 U.S.—Green v. Dormire, 691 F.3d 917 (8th Cir. 2012).

13 U.S.—Burchett v. Bower, 355 F. Supp. 1278 (D. Ariz. 1973).
Specific requirements
U.S.—Romero v. Schauer, 386 F. Supp. 851 (D. Colo. 1974).